
EVALUATOR MANUAL TRANSMITTAL SHEET

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Subject:

Child Day Care Act of 2012

Reason for Change:

To incorporate into the Evaluator Manual all additions and amendments to Health and Safety Code that were made during the 2011 Legislative Session

- Please note 1) Underlined text indicates additions or changes on 2011
2) *** indicates something was deleted in 2011

Filing Instructions:

REMOVE –2011 Child Day Care Act from Appendix B

INSERT - 2012 Child Day Care Act into Appendix B

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TABLE OF CONTENTS

CHAPTER 3.35. CHILD CARE PROVIDER REGISTRATION	10
§ 1596.60. Definitions	10
§ 1596.601. Initiation of background examination to be trustline provider; required identification cards.	10
§ 1596.603. Submission of fingerprints; criminal history check by Department of Justice	10
§ 1596.605. TrustLine Registry; criminal history check	11
§ 1596.607. Denial of application; grounds; appeal	11
§ 1596.608. Revocation of trustline registration; grounds; forfeiture of registration	12
§ 1596.61. Fees; interagency agreement for transfer of funds	12
§ 1596.615. Funding; continuous appropriation	13
§ 1596.62. Index of child abuse reports and pertinent criminal convictions; provision of continually updated records; liability	13
§ 1596.63. False representation of status as trustline applicant or child care provider; offense	13
§ 1596.64. Contract with California Child Care Resource and Referral Network; administrative duties, subcontracts	13
§ 1596.643. California Child Care Resource and Referral Network; responsibilities	14
§ 1596.645. Review and recommendations regarding operation of trustline	14
§ 1596.65. Employment agency placements	14
§ 1596.653. Transport escort services	14
§ 1596.655. Child care resources and referral agency; responsibilities for administration of trustline	15
§ 1596.656. Care provided in ancillary day care centers; registration; effect of denial or revocation of trustline registration; employment pending review of application	16
§ 1596.66. License-exempt child care providers receiving specified compensation; required registration; procedures	16
§ 1596.67. Child care providers receiving specified compensation; required registration	17
§ 1596.68. Operative date of chapter; regulations	18
CHAPTER 3.4 CALIFORNIA CHILD DAY CARE ACT	19
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS	19
§ 1596.70. Short title	19

§ 1596.71.	Provisions applicable to day care centers and family day care homes .	19
§ 1596.72.	Legislative findings and intent	19
§ 1596.73.	Purposes	19
§ 1596.74.	Definitions; construction of chapter	19
§ 1596.75.	“Child”	20
§ 1596.750.	“Child day care facility”	20
§ 1596.76.	“Day care center”	20
§ 1596.77.	“Department”	20
§ 1596.770.	“Director”	20
§ 1596.771.	Employer-sponsored child care center	20
§ 1596.773.	Probation; revocation	20
§ 1596.775.	Legislative findings and declarations; increased number of children; pilot program	21
§ 1596.78.	“Family day care home”	21
§ 1596.785.	“Nonminor student”	21
§ 1596.79.	“Person”	22
§ 1596.790.	“Planning agency”	22
§ 1596.791.	“Provider”	22
§ 1596.7915.	“Schoolage child care center”	22
§ 1596.792.	Exceptions to application of chapters 3.4, 3.5 and 3.6	22
§ 1596.792.	Exceptions to application of chapters 3.4, 3.5 and 3.6	24
§ 1596.7925.	Repealed	26
§ 1596.7926.	Repealed	26
§ 1596.7927	Repealed	26
§ 1596.793.	Application of chapters	26
§ 1596.794.	Department as liaison to child day care facilities, (Added by Stats. 2006 c. 865 (A.B. 2865, § 7.)	26
§ 1596.795.	Smoking; ordinance enforcement	26
§ 1596.796.	Exceptions to payments required to be made to child care service providers; operation of section	26
§ 1596.797.	Blood Glucose Testing; monitoring a minor child diagnosed with diabetes; insulin injections	27
§ 1596.798.	Child day care facility staff administration of inhaled medication; requirements	27
§ 1596.799.	Child care centers which offer exclusive program of services for which	

there is no contract or agreement between the parent and center for regular care of child, and for which no prearranged schedule for care of child exists; exemption from immunization requirements 28

ARTICLE 1.5 CHILD CARE REVIEW PANEL [REPEALED]

ARTICLE 2. ADMINISTRATION OF CHILD DAY CARE LICENSING 28

§ 1596.80.	Child day care facilities, licenses	28
§ 1596.803.	Child day care facility licenses; fees assessments; additional fees; use of revenues collected; grounds for forfeiture or denial	28
§ 1596.805.	Specialized services; special permits	30
§ 1596.806.	Exemption from square footage, toilet, isolation space, outdoor activity space, and fencing requirements	30
§ 1596.807.	Exemption from licensure; programs at public or private schools; allowance of additional children	31
§ 1596.808.	Beverages served by day care providers to children; requirements; exceptions for medical needs and beverages provided by parents or guardians; updated guidelines; inspections to determine compliance .	32
§ 1596.809.	Fire clearance approval; condition for licensure; notice to prospective applicants	32
§ 1596.81.	Rules and regulations; applicability of licensing requirements	32
§ 1596.813.	Children enrolled in family day care homes; immunization requirements; rules and regulations	32
§ 1596.815.	Review of department's regulations; clarification; correction of defects	32
§ 1596.816.	Manner of regulation of licensees	32
§ 1596.817.	Site visits; posting of notices; contents; citations for violations; duration of posting; civil penalties	33
§ 1596.818.	Identification of violations with direct, immediate risk to children; final conclusion	33
§ 1596.82.	Contracts with public agencies; licensing, approval, or consultation responsibilities; staff positions; reimbursements	34
§ 1596.83.	Statement of mailing address; notice of change	34
§ 1596.84.	Provisional licenses; required clearances; term; limited extension	34
§ 1596.841.	Current roster of children provided care in facility required	34
§ 1596.842.	Provider rights; approval and distribution	34
§ 1596.843.	Facility visit and compliant investigation; licensing reports; review of reports	35
§ 1596.844.	Requests of licensees to review notices of deficiency or penalty; written acknowledgment	36

§ 1596.845.	Orientation; outline	36
§ 1596.846.	Baby walkers	36
§ 1596.847.	Child day care facilities; prohibition against unsafe cribs; information on sudden infant death syndrome; legal actions	36
§ 1596.85.	Day care centers and family day care homes; sale or exchange of licenses and special permits	37
§ 1596.851.	Prior license revocation; cessation of review	37
§ 1596.852.	Inspections; notice	38
§ 1596.853.	Request for inspection; complaints; preliminary review; notification of resource and referral programs; notification of Child Development Division	39
§ 1596.8535.	Time for inspection or site visit or child daycare facility; department regulations for notification of period of inactivity; inactive status of licensees	39
§ 1596.854.	Disciplinary action; effect of withdrawal of application, suspension, expiration, forfeiture or revocation of license or permit	40
§ 1596.855.	Regulations and statutory provider rights; provision of copies to applicants; regulations revisions; provision to association of child care agencies; versions in Spanish and other languages	40
§ 1596.8555.	Posting of License	41
§ 1596.856.	Denial of license	41
§ 1596.857.	Right of parent or guardian to inspect facility without advance notice; informing parents and guardians; prohibition of retaliation; violations; penalty; Family Child Care home Notification of Parents' Rights; registered sex offenders.	41
§ 1596.858.	Forfeiture of license by operation of law	42
§ 1596.859.	Public access to licensing reports or other public licensing documents; referral request; right to view licensing information of facility; advisement form; compliance verification	42
§ 1596.8595.	Posting licensing report by child care facility or home; duration of posting; civil penalty for failure to comply; reports to be provided to parents or guardian of each child receiving services	43
§ 1596.86.	Publication and use of list of facilities	44
§ 1596.861.	License number; use in advertisements; publications, or announcements	45
§ 1596.862.	Enrollment or retention of nonminor student at schoolage child care center: approval or denial of request; contents of request	45
§ 1596.865.	Child health care training	46
§ 1596.866.	Additional health and safety training; condition of licensure	46

§ 1596.8661. Pediatric first aid training in administration of inhaled medication	48
§ 1596.867. Disaster plan; earthquake preparedness checklist; construction of section	48
§ 1596.869. Directors of combination child day care facilities; inclusion in teachers-child ratio	50
§ 1596.87. Staff development and training program	50
§ 1596.871. Fingerprints and criminal record information of individuals in contact with child day care facility clients; exemptions; criminal records clearances	50
§ 1596.8712. Exclusion of individual from licensed family day care home; notice	56
§ 1596.8713. Criminal record information; fingerprint processing; fee	57
§ 1596.8714. Review of criminal background check requirements; workgroup	57
§ 1596.8715. Denial or termination of employment for prior conviction; civil liability; insurance liability	58
§ 1596.8716. Physical examination as condition of employment; health screening exemption; public school principals	58
§ 1596.872 Renumbered	58
§ 1596.872a. Child care advocate program; duties; report; implementation	58
§ 1596.872b. Child care advocate program; duties; implementation	59
§ 1596.8725 Repealed	59
§ 1596.873. Advisory committee functions	59
§ 1596.874. Notice to be posted in licensed facility; availability of licensee's copy of regulations	60
§ 1596.875. Duties of department to assure compliance with act	60
§ 1596.876. Release of minor to peace officer; provision of address and phone number of parent or guardian	60
§ 1596.877. Child abuse and neglect complaints; check of records; investigation of reports	60
§ 1596.878. Establishment, administration and monitoring of program	61
§ 1596.879. Denial of application or permit; notice and hearing	61
ARTICLE 3. EMPLOYER DISCRIMINATION REMEDIES	61
§ 1596.880. "Employee" and "Employer" defined	61
§ 1596.881. Employees enforcement of law or refusal to violate law; discharge, demotion, or suspension; prohibition; notification of rights	61
§ 1596.882. Employee enforcement of law or refusal to violate law; disposition of claims	62
§ 1596.883. Refusal to rehire, promote, or restore eligible employee;	

misdemeanor	62
ARTICLE 4. SUSPENSION AND REVOCATION	62
§ 1596.885. Denial, suspension or revocation of licenses, registration, or special permits; grounds	63
§ 1596.886. Temporary suspension	63
§ 1596.8865. Death or serious injury due to abuse or willful neglect: notice by local child protective agency; temporary suspension of license; notice to involved persons; service of accusation; hearing; evidence	63
§ 1596.8866. Reopening investigations into licensed child day care facilities; receipt of court record indicating judicial determination that injury to child may have been inflicted while in care and custody of day care provider	64
§ 1596.8867. Unannounced visit following temporary suspension or revocation of license; verification that facility is nonoperational	64
§ 1596.887. Proceedings for suspension, revocation, or denial of license, registration, or special permit; law governing standard of proof; hearings; continuances	64
§ 1596.8871. Hearing; testimony of child or similarly vulnerable witness outside of presence of respondent; condition; closed-circuit television; clearing of hearing room	65
§ 1596.8872. Witnesses under age 12; hearsay testimony	66
§ 1596.8875. Witness fees and mileage; payment of expenses	66
§ 1596.888. Reinstatement	66
§ 1596.889. Evidence; standard of proof	66
§ 1596.8895. Notice of suspension of license to parent or legal guardian	66
ARTICLE 4.5. EMPLOYEE ACTIONS	67
§ 1596.8897. Prohibited positions or employment; grounds; notice; removal; appeal; petition for reinstatement	67
§ 1596.8898. Grounds for exclusion of certain persons from designated facilities ...	69
§ 1596.8899. Unannounced visit following order of immediate removal or exclusion	70
ARTICLE 5. OFFENSES	70
§ 1596.89. Actions to enjoin violations	70
§ 1596.890. Violations; punishment	71
§ 1596.891. Violation of Section § 1596.80; civil penalties for refusal to seek licensure or operation after denial of licensure; appeal; exemption	71
§ 1596.8915. Informing facility of unannounced site visit; misdemeanor	71
§ 1596.892. Civil, criminal, and administrative remedies under this article not exclusive	72

§ 1596.893. Renumbered	72
§ 1596.893a. Citations to violating facilities; penalties; review; implementation	72
§ 1596.893b. Citations to violating facilities; penalties; regulations; implementations	73
§ 1596.894. Abatement of action against unlicensed facility; ownership change	73
§ 1596.895. Notification of priority one violations; implementation	73
CHAPTER 3.5. DAY CARE CENTERS	74
ARTICLE 1. GENERAL PROVISIONS	74
§ 1596.90. Licensure of day care centers; law applicable	74
ARTICLE 2. LICENSURE REQUIREMENTS	74
§ 1596.95. Application; form; contents	74
§ 1596.952. Corporate applicant; directors or officers; related facilities; license issuance or revocation	75
§ 1596.955. Child day care centers serving preschool age children; optional program; departmental guidelines and regulations	75
§ 1596.956. Child day care centers serving infants; optional toddler program; departmental guidelines and regulations	76
§ 1596.96. Organization possessing current valid license to operate facility at another site; review of application and determination, time limit; provisional license; development of expedited procedures; appeal procedure	77
§ 1596.97. Issuance of license or special permit	78
§ 1596.98. Noncompliance; notice; civil penalties; plan of correction; regulations	78
§ 1596.99. Levy of civil penalty in addition to suspension, temporary suspension, or revocation; amounts	78
ARTICLE 3. ADMINISTRATION	79
§ 1597.01. Repealed	79
§ 1597.05. Licensing reviews; health and safety consideration; completion of records; verification	79
§ 1597.055. Day care center teachers; qualifications	80
§ 1597.056. Extended day care; teacher qualifications	80
§ 1597.057. Child development associate credentials; qualifications; standards	80
§ 1597.059. Aide to child care teachers; qualifications	81
§ 1597.06. Repealed by Stats.1990, c 1455 (S.B.2374) § 20	81
§ 1597.07. Written policy statements, submission to department and parents of children; list of parents served by the facility	81

§ 1597.08.	Unannounced site visits	81
§ 1597.09.	Unannounced visits; frequency	81
§ 1597.091.	Unannounced spot visits; implementation	82
§ 1597.11.	Notice to department of education of violations endangering health or safety of children; time for notice	82
§ 1597.13.	License application; processing time	82
§ 1597.14.	Sale of licensed child day care center resulting in issuance of new license; conditions	82
§ 1597.15.	Gastric tube feedings; medication administered through nebulizers; pilot project; authorization; precautions; evaluation; funding	83
§ 1597.20.	Legislative findings and declarations	85
§ 1597.21.	Schoolage day care centers; licensure and employee qualifications; alternative education and experience requirements	85
CHAPTER 3.6. FAMILY DAY CARE HOMES		87
§ 1597.30.	Legislative findings and declarations	87
§ 1597.35.	Repealed	87
§ 1597.36.	Loan guarantee application request; need for repairs, renovations, or additions; documentation	87
§ 1597.40.	Public policy to provide home environment; restriction governing real property	87
§ 1597.43.	Legislative findings and declarations; congregate care facilities distinguished	88
§ 1597.44.	Small family day care homes; number of children	89
§ 1597.45.	Small family day care homes	89
§ 1597.46.	Large family day care homes	89
§ 1597.465.	Large family day care homes; number of children	91
§ 1597.467.	Injury or acts of violence reporting requirements	91
§ 1597.47.	Local public entities; restrictions on building heights, setbacks, or lot dimensions; application of local ordinances; abatement of nuisances	92
§ 1597.50.	Renumbered § 1597.30 and amended by Stats. 1983, c. 1233, § 1	92
§ 1597.501.	Renumbered § 1597.40 and amended by Stats. 1938, c. 1233, § 3	92
§ 1597.51.	Renumbered § 1596.871 and amended by Stats 1984, c. 6165, § 12	92
§ 1597.52.	Limitation on licensing reviews to health and safety considerations; experience requirement for provider of large family day care home	92
§ 1597.53.	Licensure; law governing	92
§ 1597.531.	Liability insurance or bond; affidavits; additional insured parties	93

§ 1597.54.	Application for license	93
§ 1597.541.	Age-appropriate immunization requirements; adoption of regulations .	94
§ 1597.542.	Regulations; degrees of violations; implementation	94
§ 1597.55.	Renumbered	94
§ 1597.55a.	Unannounced visits; announced site visits prior to initial licensing; circumstances under which annual unannounced sit visits to are conducted; spot checks	95
§ 1597.55b.	Site visits; unannounced visits or spot checks; annual visits on all licensed family day care homes; implementation	95
§ 1597.56.	Noncompliance; written notice; civil penalties; plan of correction; regulations	96
§ 1597.57.	Applications forms, consumer education program; orientation program	96
§ 1597.58.	Civil penalties	97
§ 1597.59.	Disposition of license application; conditions; site visits	98
§ 1597.60.	Repealed	98
§ 1597.61.	Operation without license; notice; cease and desist order; action to enjoin; conduct of prosecution	98
§ 1597.62.	Civil penalties; uncorrected violations; implementation	98
§ 1597.621.	License for the pilot project registrants; requirements; complaint and revocation procedures	99
1597.63.	Repealed	99
1597.64.	Renumbered	99
1597.65.	Repealed	99
CHAPTER 3.65.	EMPLOYER-SPONSORED CHILD CARE CENTERS	99
ARTICLE 1.	GENERAL PROVISIONS	99
§ 1597.70.	Legislative findings and declarations	99
ARTICLE 2.	LICENSING WAIVERS FOR SMALL BUSINESSESS	99
§ 1597.71.	Regulations presenting difficulties to small business	99

CHAPTER 3.35. CHILD CARE PROVIDER REGISTRATION

§ 1596.60. Definitions

Text of section added by Stats. 2009, c. 199 (S.B. 702), § 2, operative January 1, 2011

(a) For the purposes of this chapter, the following definitions shall apply:

(1) "Department" means the State Department of Social Services.

(2) "Director" means the Director of Social Services.

(3) "Trustline provider," "license exempt child care provider," or "provider" means a person 18 years of age or older who provides child care, supervision, or any person providing in-home educational or counseling services to a minor, and who is not required to be licensed pursuant to Section 1596.792. "Provider" also means a person who provides care or childcare supervision in an ancillary day care center other than the parent or guardian of the child receiving the care.

(4) "Ancillary day care center" means a day care center, as defined in Section 1596.76, that is associated with an athletic club, grocery store, or other business or group of businesses that is not required to be licensed pursuant to subdivision (k) of Section 1596.792 that provides a day care center that is ancillary to its principal business activity and that provides day care services, with or without a fee, for the children of the clients or customers of that business or group of businesses while the clients or customers are engaged in shopping for, or purchasing, goods or services from that business or group of businesses.

(b) This section shall become operative on January 1, 2011.

§ 1596.601. Initiation of background examination to be trustline provider; required identification cards.

Any child care provider who possesses any one of the following identification cards may initiate a background examination to be a trustline provider:

(a) A valid California driver's license.

(b) A valid identification card issued by the Department of Motor Vehicles.

(c) A valid Alien Registration Card.

(d) In the case of a person living in a state other than California, a valid numbered photo identification card issued by an agency of the state other than California.

§ 1596.603. Submission of fingerprints; criminal history check by Department of Justice

(a) Each person initiating a background examination to be a trustline provider shall either obtain two sets of fingerprints from a law enforcement agency or other local agency on a fingerprint card authorized by the Department of Justice and shall submit the fingerprints, or send his or her fingerprints to the Department of Justice by electronic transmission in a manner approved by the department, unless exempted in subdivision (e), and a completed trustline application to the department, or the local child care resource and referral agency which will immediately forward the application package to the department. The agency taking the fingerprints shall inscribe the serial number from the identification card described in Section 1596.601 on the fingerprint cards.

(b) A law enforcement agency or other local agency authorized to take fingerprints may charge a reasonable fee to offset the costs of fingerprinting for the purposes of this chapter.

(c) Upon receipt, the department shall transmit the fingerprint card and a copy of the application to the Department of Justice. The Department of Justice shall use the fingerprints and the application to search the state and Federal Bureau of Investigation criminal history information pursuant to Section 1596.871 and the automated child abuse system pursuant to subdivision (b) of Section 1596.877.

(d) A person who is a current licensee or employee in a facility licensed by the department need not submit fingerprints to the department and may transfer their criminal record clearance pursuant to subdivision (h) of Section 1596.871. The person shall instead submit to the department, along with the person's application, a copy of the person's identification card described in Section 1596.601 and sign a declaration verifying the person's identity. A willful false declaration is a violation of this subdivision punishable in the same manner as provided under Section 1596.890.

§ 1596.605. TrustLine Registry; criminal history check

(a)(1) The department shall establish a trustline registry pursuant to this chapter and shall continuously update the registry information. Upon submission of the trustline application and fingerprints or other identification documents pursuant to either subdivision (a) or (e) of Section 1596.603, the department shall enter into the trustline registry the provider's name, identification card number, and an indicator that the provider has submitted an application and fingerprints or identification documentation. This provider shall be known as a "trustline applicant."

(2) A person shall not be entitled to apply to be a trustline provider and shall have his or her application returned without the right to appeal if the provider would not be eligible to obtain a child care license pursuant to Section 1596.851.

(b)(1) Before approving the person's application, the department shall check the individual criminal history pursuant to Section 1596.871 and against the child abuse index pursuant to subdivision (b) of Section 1596.877. Upon completion of the searches of the state summary criminal history information and the child abuse index, and, if applicable, the records of the Federal Bureau of Investigation, the department shall grant the trustline application if grounds do not exist for denial pursuant to Section 1596.607 and the department shall enter that finding in the provider's record in the trustline registry and shall notify the provider of the action. This provider shall be known as a "registered trustline child care provider."

(2) The department may transfer the criminal record clearance granted to a registered trustline child care provider and hold the registered trustline child care provider's criminal record clearance in its active files pursuant to subdivision (h) of Section 1596.871.

§ 1596.607. Denial of application; grounds; appeal

(a)(1) If the department finds that the trustline applicant has been convicted of a crime, other than a minor traffic violation, the department shall deny the application, unless the director grants an exemption pursuant to subdivision (f) of Section 1596.871.

(2) If the department finds that the trustline applicant has an arrest as described in subdivision (a) of Section 1596.871, the department may deny the application if the trustline applicant may pose a risk to the health and safety of any person who is or may become a client and the department complies with subdivision (e) of Section 1596.871.

(3) The department shall comply with the requirements of Section 1596.877 and may deny the application of a trustline applicant for substantiated child abuse that may pose a threat to the health and safety of any person who is or may become a client.

(4) The department may deny the application for registration of the trustline applicant if it discovers that it had previously revoked a license or certificate to be a certified family home held by the trustline applicant or excluded the trustline applicant from a licensed facility.

(5) The department may deny the application for registration of the trustline applicant if it discovers that it had previously denied the trustline applicant's application for a license from the department or certificate of approval to be a certified family home.

(b)(1) If, the department denies registration pursuant to subdivision (a), it shall advise the provider of the right to appeal. The provider shall have 15 days to appeal the denial.

(2) Upon receipt by the department of the appeal, the appeal shall be set for hearing. The hearing shall be conducted in accordance with Section 1596.887.

§ 1596.608. Revocation of trustline registration; grounds; forfeiture of registration

(a)(1) The department may revoke a provider's trustline registration for any of the following:

(A) Procuring trustline registration by fraud or misrepresentation.

(B) Knowingly making or giving any false statement or information in conjunction with the application for issuance of trustline registration.

(C) Criminal conviction unless an exemption is granted pursuant to Section 1596.871.

(D) Incident of child abuse or neglect or other conduct that poses a threat to the health and safety of any person who is or may become a client.

(2) The hearing to revoke the trustline registration shall be conducted in accordance with Section 1596.887.

(b) The trustline provider's registration shall be considered forfeited under the following conditions:

(1) The trustline provider has had a license or certificate of approval revoked, suspended, or denied as authorized under Section 1534, 1550, 1568.082, 1569.50, or 1596.885.

(2) The trustline provider has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897.

(3) The trustline provider fails to maintain a current mailing address with the department.

§ 1596.61. Fees; interagency agreement for transfer of funds

(a) The department may charge a fee to a trustline applicant. The department may enter into an interagency agreement for the purpose of transferring funds to offset the costs incurred by the California Child Care Resource and Referral Network to implement the trustline program pursuant to this chapter.

(b) The maximum fee shall not exceed the total actual costs of all of the following:

(1) The searches of the state summary criminal history information and the child abuse index performed by the Department of Justice. The cost to check the criminal history information shall not subsidize the cost to check the criminal history of other persons by the State Department of Social Services who are not charged a fee by the Department of Justice.

(2) The cost incurred by the Department of Justice for the searches of the records of the Federal Bureau of Investigation.

(3) The information and technical assistance provided by the California Child Care Resource and Referral Network to parents, providers, and employment agencies.

(4) The implementation by the local child care resource and referral programs of the trustline program.

(5) The cost to the department to process the applications and maintain the trustline registry.

§ 1596.615. Funding; continuous appropriation

All moneys collected by the department to implement this chapter shall, notwithstanding Section 13340 of the Government Code, be continuously appropriated to the department without regard to fiscal year for expenditure pursuant to this chapter.

§ 1596.62. Index of child abuse reports and pertinent criminal convictions; provision of continually updated records; liability

(a)(1) The Department of Justice shall maintain and continually update an index of reports of child abuse by, and pertinent criminal convictions of, providers and shall inform the department of subsequent reports received from the child abuse index pursuant to Section 11170 of the Penal Code and the criminal history. The department shall continually update the trustline registry pursuant to the actions required in Section 1596.607.

(2) The trustline applicant and registered trustline provider shall inform the department of any new mailing address in writing within 10 days of the change in address.

(b) The department shall provide the California Child Care Resource and Referral Network with a continually updated record of the trustline applicants, trustline applicants that the department denied, the registered trustline child care providers, and providers whose registration that the department revoked.

(c) Notwithstanding any other law, including Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, state officers or employees shall not be liable for any damages caused by their conduct pursuant to this chapter except for intentional acts or gross negligence.

(d) On July 1, 1998, the Department of Justice shall transfer all trustline application and registration material to the department. The department shall be responsible for all pending applications and hearings and shall transfer all trustline application and registration information.

§ 1596.63. False representation of status as trustline applicant or child care provider; offense

It is a misdemeanor for a person to falsely represent or present himself or herself as a trustline applicant or a registered trustline child care provider.

§ 1596.64. Contract with California Child Care Resource and Referral Network; administrative duties, subcontracts

(a) The department shall enter into a contract with the California Child Care Resource

and Referral Network to administer the trustline duties as described in this chapter.

(b) The California Child Care Resources and Referral Network may subcontract with local resource and referral programs for the implementation of the trustline program at the local level.

§ 1596.643. California Child Care Resource and Referral Network; responsibilities

(a) The California Child Care Resource and Referral Network shall have the following responsibilities:

(1) Establish and maintain a toll-free line to allow parents, employment agencies, child care referral groups and registries, alternative payment programs, and others to determine if a provider is a trustline applicant or a registered trustline child care provider.

(2) Develop a statewide promotion plan, publicize statewide existence, benefits, and methods of accessing the trustline for both parents and providers, and distribute trustline applications statewide.

(3) Monitor and provide assistance to the child care resource and referral agencies in carrying out their trustline responsibilities.

(4) Seek private financial support for the trustline.

(5) Ensure that the trustline is accessible to all persons in the state, regardless of their ability to speak English.

(b) Officers or employees of the California Child Care Resource and Referral Network shall not be liable for any injury caused by their conduct pursuant to paragraph (1) of subdivision (a), except for intentional conduct or gross negligence.

§ 1596.645. Review and recommendations regarding operation of trustline

The California Child Care Resource and Referral Network, in consultation with representatives of private industry, parents, child care resource and referral agencies, the department, the State Department of Education, trustline providers, employment agencies, and the pediatric health sector, shall review and make recommendations concerning the operation of the trustline. This review shall include a consideration of strategies for reducing the processing time for trustline application denials, and to the extent possible, an evaluation of, or proposed methodology for measuring, whether those child care providers for whom trustline applications are denied are still providing care when denial letters are sent to them.

§ 1596.65. Employment agency placements

(a) An employment agency, as defined in Section 1812.501 of the Civil Code, that refers a child care provider to parents or guardians who are not required to be a licensed child day care facility shall not make a placement of a child care provider who is not a trustline applicant or a registered child care provider.

(b) Any violation of this section is a misdemeanor and shall be punishable by a fine of one hundred dollars (\$100).

§ 1596.653. Transport escort services

(a) It is the intent of the Legislature to protect the well-being of California children by regulating private individuals and companies that transport or accompany minors to out-of-

state residential facilities or institutions.

(b) As used in this section:

(1) "Transport escort service" means any person, partnership, association, or corporation that accepts financial compensation or other consideration to accompany or transport minors who are residents of California to any residential facility or institution located outside the state.

(2) "Minor" means any person under the age of 18 years.

(3) "Department" means the State Department of Social Services.

(c) Every transport escort service that accompanies or transports a minor who is a resident of California to any residential facility or institution located outside the state, shall first provide the minor's parents, custodial parent, or legal guardian with all of the following:

(1) A description of the child care provider trustline registry established pursuant to this chapter that provides criminal history checks on child care providers.

(2) An explanation of how a parent may obtain more information about the child care provider trustline registry.

(3) A statement that a transport escort service is prohibited by law from transporting or accompanying a minor unless the person or persons transporting the minor are trustline registered child care providers.

(4) An explanation of how the parent may verify the trustline registration of the transport escort service.

(5) An explanation of the minor's right to make a complaint to a child protective agency concerning abusive treatment by the transport escort service.

(d) A transport escort service shall not transport or accompany a minor without obtaining the written permission of the minor's parents, custodial parent, or legal guardian.

(e) The transport escort service shall verify in writing that the minor's parents, custodial parent, or legal guardian has received the information required under subdivision (c).

(f) A transport escort service shall not accompany or transport a minor to any residential facility or institution located outside the state, unless the person or persons transporting or accompanying the minor are trustline registered child care providers.

(g) A minor, parent, or legal guardian claiming to be aggrieved by a violation of this section by a transport escort service may bring a civil action for injunctive relief or damages, or both.

(h) In addition to the remedy provided in subdivision (g), a violation of this section may be prosecuted as a misdemeanor punishable by a fine of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) as to each person with respect to whom a violation occurs, or imprisonment in a county jail for not more than six months.

(i) This section does not apply to the following:

(1) The transport of minors by any governmental agency or employee.

(2) The transport of minors under the jurisdiction of the juvenile court.

(3) The transport of minors by family members or relatives.

(j) Nothing in this section shall limit any claim for damages or the issuance of any injunction that a parent or child may assert against a transport escort service pursuant to any other state or federal law or regulation.

§ 1596.655. Child care resources and referral agency; responsibilities for administration of trustline

A child care resource and referral agency established pursuant to Article 2

(commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code shall have the following responsibilities in the administration of the trustline within its local geographic area of service:

(a) Implement the local elements of the promotion plan designed by the California Child Care Resource and Referral Network pursuant to Section 1596.643 and publicize the availability, purpose, and benefits of the trustline to parents, child care providers, prospective child care providers, and institutions and agencies that have frequent contact with parents and providers.

(b) Cooperate with the California Child Care Resource and Referral Network in promotional and data collection efforts.

(c) Report annually to the California Child Care Resource and Referral Network on local promotional efforts, problems encountered, and recommendations for program improvement.

(d) Ensure that the trustline is accessible to all persons in the state, regardless of their ability to speak English.

(e) Provide information and technical assistance on the trustline process to parents, child care providers, and other interested parties.

§ 1596.656. Care provided in ancillary day care centers; registration; effect of denial or revocation of trustline registration; employment pending review of application

(a) A person 18 years of age or older, who provides child care or child care supervision in an ancillary day care center, as defined in section 1596.60, shall be registered pursuant to Sections 1596.603 and 1596.605. Nothing in this chapter shall be construed to prevent a person under 18 years of age from being employed in an ancillary day care center.

(b) Notwithstanding any provision of law to the contrary, if a person 18 years of age or older is denied trustline registration by the department pursuant to Section 1596.065 or 1596.607, or if the department revokes a person's trustline registration pursuant to Section 1596.608, that person shall be ineligible for employment in a position providing child care or child care supervision in an ancillary day care center.

(c) If an existing employee providing child care or child care supervision in an ancillary day care center, or a prospective employee seeking employment in a position that provides child care or child care supervision in an ancillary day care center, submits an application to the department to become a registered trustline child care provider, that existing or prospective employee shall be deemed to be in compliance with the requirements of this section and permitted to work in a position providing child care or child care supervision pending the department's review of his or her trustline application. The existing or prospective employee shall become ineligible for employment providing child care or child care supervision in an ancillary day care center if the department denies his or her trustline application and any right to appeal the department's denial has been exhausted or has expired.

(d) This section shall become operative on January 1, 2011.

§ 1596.66. License-exempt child care providers receiving specified compensation; required registration; procedures

(a) Each license-exempt child care provider, as defined pursuant to Section 1596.60,

who is compensated, in whole or in part, with funds provided pursuant to the Alternative Payment Program, Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code or pursuant to the federal Child Care and Development Block Grant Program, except a provider who is, by marriage, blood, or court decree, the grandparent, aunt, or uncle of the child in care, shall be registered pursuant to Sections 1596.603 and 1596.605 in order to be eligible to receive this compensation. Registration under this chapter shall be required for providers who receive funds under Section 9858 and following of Title 42 of the United States Code only to the extent permitted by that law and the regulations adopted pursuant thereto. Registration under this chapter shall be required for providers who receive funds under the federal Child Care and Development Block Grant Program only to the extent permitted by that program and the regulations adopted pursuant thereto.

(b) For the purposes of registration of the providers identified in subdivision (a), the following procedures shall apply:

(1) Notwithstanding subdivision (a) of Section 1596.603, the provider shall submit the fingerprints and trustline application to the local child care resource and referral agency established pursuant to Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code. The local child care resource and referral agency shall transmit the fingerprints

and completed trustline applications to the department and address any local problems that occur in the registration system. If a fee is charged by the local child care resource and referral agency that takes a provider's fingerprints, the provider shall be reimbursed for this charge by the State Department of Education, through the local child care resource and referral agency, from federal Child Care and Development Block Grant funds to the extent that those funds are available.

(2) The department shall adhere to the requirements of Sections 1596.603, 1596.605, 1596.606, and 1596.607 and shall notify the California Child Care Resource and Referral Network of any action it takes pursuant to Sections 1596.605, 1596.606, and 1596.607.

(3) The California Child Care Resource and Referral Network shall notify the applicable local child care resource and referral agencies, alternative payment programs, and county welfare departments of the status of the trustline applicants and registered trustline child care providers. The network shall maintain a toll-free telephone line to provide information to the local resource and referral agencies, the alternative payment programs, and the child care recipients of the status of providers.

(c) This section shall become operative only if funds appropriated for the purposes of this article from Item 6110-196-890 of Section 2 of the Budget Act of 1991 are incorporated into and approved as part of the state plan that is required pursuant to Section 658(E)(a) of the federal Child Care Block Grant Act of 1990 (Sec. 5082, P.L. 101-508).

§ 1596.67. Child care providers receiving specified compensation; required registration

(a) To the extent permitted by federal law, each child care provider, as defined by Section 1596.60, who receives compensation, in whole or in part, under Stage 1 of the CalWORKs Child Care Program pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, for providing child care for a recipient or former recipient, except a provider who is, by marriage, blood, or court decree, the grandparent, aunt, or uncle of the child in care, shall be registered pursuant to Sections 1596.603 and 1596.605 in order to be eligible to receive this compensation. Active trustline registration is required for

providers who receive compensation under Stage 1 of the CalWORKs Child Care Program pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, for providing child care for a recipient or former recipient only to the extent permitted by that law and the regulations adopted pursuant thereto. This section applies only to a license-exempt child care provider, as defined by Section 1596.60, who registers for payment under Stage 1 of the CalWORKs Child Care Program pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, for providing child care for a recipient or former recipient after the implementation of the trustline registration system in those programs. A provider, as defined by Section 1596.60, who was exempted from trustline registration because the provider was not compensated, in whole or in part, with funds provided under Stage 1 of the CalWORKs Child Care Program pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, for providing child care for a recipient or former recipient shall be registered, at no cost to the provider, pursuant to Sections 1596.603 and 1596.605 when either of the following occur:

(1) The provider begins to provide child care to an eligible family for which he or she has not provided care.

(2) The provider begins to provide child care to an eligible family subsequent to a lapse in providing care that is compensated under Stage 1 of the CalWORKs Child Care Program pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, for providing child care for a recipient or former recipient.

(b) Payment provided pursuant to subdivision (a) shall cease if the provider has a criminal conviction for which the department has not granted a criminal record exemption pursuant to subdivision (f) of Section 1596.871.

(c) Subdivision (a) shall not be implemented unless funding for trustline registration is appropriated to the department for this purpose in the annual Budget Act or in other legislation. The department shall enter into a contract with the California Child Care Resource and Referral Network to administer the trustline as it relates to providers who are compensated under Stage 1 of the CalWORKs Child Care Program pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, for providing child care for a recipient or former recipient.

§ 1596.68. Operative date of chapter; regulations

(a) This chapter shall be operative on July 1, 1998.

(b)(1) Before, on, or after July 1, 1998, the department may adopt regulations to implement this chapter.

(2) The initial adoption of any emergency regulations for purposes of this chapter following January 1, 1998, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

CHAPTER 3.4 CALIFORNIA CHILD DAY CARE ACT

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

§ 1596.70. Short title

This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with 1597.30) may be cited as the California Child Day Care Facilities Act.

§ 1596.71. Provisions applicable to day care centers and family day care homes

This chapter applies to Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30). This chapter also applies to Chapter 3.65 (commencing with Section 1597.70).

§ 1596.72. Legislative findings and intent

The Legislature finds all of the following:

- (a) That child day care facilities can contribute positively to a child's emotional, cognitive, and educational development.
- (b) That it is the intent of this state to provide a comprehensive, quality system for licensing child day care facilities to ensure a quality day care environment.
- (c) That this system of licensure requires a special understanding of the unique characteristics and needs of the children served by child day care facilities.
- (d) That it is the intent of the Legislature to establish within the State Department of Social Services an organizational structure to separate licensing of child day care facilities from those facility types administered under Chapter 3 (commencing with Section 1500).
- (e) That good quality child day care services are an essential service for working parents.

§ 1596.73. Purposes

The purposes of this act are to:

- (a) Streamline the administration of child care licensing and thereby increase the efficiency and effectiveness of this system.
- (b) Encourage the development of licensing staff with knowledge and understanding of children and child care needs.
- (c) Provide providers of child care with technical assistance about licensing requirements.
- (d) Enhance consumer awareness of licensing requirements and the benefits of licensed child care.
- (e) Recognize that affordable, quality licensed child care is critical to the well-being of parents and children in this state.

§ 1596.74. Definitions; construction of chapter

Unless the context otherwise requires, the definitions contained in this chapter govern the construction of this chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30).

§ 1596.75. “Child”

"Child" means a person who is under 18 years of age who is being provided care and supervision in a child day care facility, except where otherwise specified in this act.

§ 1596.750. “Child day care facility”

"Child day care facility" means a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes.

§ 1596.76. “Day care center”

"Day care center" means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers.

§ 1596.77. “Department”

"Department" means the State Department of Social Services.

§ 1596.770. “Director”

"Director" means the Director of Social Services.

§ 1596.771. Employer-sponsored child care center

"Employer-sponsored child care center" means any child day care facility at the employer's site of business operated directly or through a provider contract by any person or entity having one or more employees, and available exclusively for the care of children of that employer, and of the officers, managers, and employees of that employer.

§ 1596.773. Probation; revocation

(a) "Probation" means the period of time that a licensed child day care facility is required to comply with specific terms and conditions set forth by the department in order to stay or postpone the revocation of the facility's license.

(b) "Revocation" means an administrative action taken by the department to void or rescind the license of a child day care facility because of serious or chronic violations of licensing laws or regulations by the facility.

§ 1596.775. Legislative findings and declarations; increased number of children; pilot program

The Legislature finds and declares all of the following:

(a) There is a severe shortage of child care for schoolage children throughout California, with many schoolage children going home to an empty, unsupervised setting after school.

(b) For nearly five years several counties have participated in a pilot program that allows for a family day care home to care for two additional children above the current number allowed pursuant to licensing regulations.

(c) As part of the pilot program, a study was conducted by the Assembly Office of Research. The results of the study demonstrated that the pilot program achieved all of the following results:

(1) Increased access to care for schoolage children.

(2) Participating providers encountered few problems and strongly support expansion of the program.

(3) Parents of children in the pilot program family day care homes strongly support the program.

(4) Participating providers with additional children were no more likely to receive substantiated complaints from licensing officials than nonparticipants.

(5) Local governments and planning officials saw little or no impact on their licensing policies and procedures.

(6) Overall quality of care was not adversely affected.

§ 1596.78. “Family day care home”

(a) "Family day care home" means a home that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family day care home or a small family day care home.

(b) "Large family day care home" means a home that provides family day care for 7 to 14 children, inclusive, including children under the age of 10 years who reside at the home, as set forth in Section 1597.465 and as defined in regulations.

(c) "Small family day care home" means a home that provides family day care for eight or fewer children, including children under the age of 10 years who reside at the home, as set forth in Section 1597.44 and as defined in regulations.

§ 1596.7. “Nonminor student”

"Nonminor student" means a person 18 years of age or older who qualifies as an individual with exceptional needs, as defined in Section 56026 of the Education Code, and who qualifies for services from a regional center for persons with developmental disabilities, as a person with a developmental disability as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code. The terms "child," "children," or "minor," as used in this chapter or Chapter 3.5 (commencing with Section 1596.90), may also include a nonminor student enrolled or retained at a schoolage child care center.

§ 1596.79. "Person"

"Person" means an individual, partnership, association, corporation, limited liability company or governmental entity, such as the state, a county, city, special district, school district, community college district, chartered city, or chartered city and county.

§ 1596.790. "Planning agency"

"Planning agency" means the agency designated pursuant to Section 65100 of the Government Code.

§ 1596.791. "Provider"

"Provider" means a person who operates a child day care facility and is licensed pursuant to Chapter 3.5 (commencing with Section 1596.90) or 3.6 (commencing with Section 1597.30).

§ 1596.7915. "Schoolage child care center"

"Schoolage child care center" means a day care center or part of a day care center that provides nonmedical care and supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of schoolage children or nonminor students, or both, in a group setting for less than 24 hours per day.

§ 1596.792. Exceptions to application of chapters 3.4, 3.5 and 3.6

Section operative until Jan. 1, 2014. See, also, section operative Jan. 1, 2014.

This chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30) do not apply to any of the following:

- (a) Any health facility, as defined by Section 1250.
- (b) Any clinic, as defined by Section 1202.
- (c) Any community care facility, as defined by Section 1502.
- (d) Any family day care home providing care for the children of only one family in addition to the operator's own children.
- (e) Any cooperative arrangement between parents for the care of their children when no payment is involved and the arrangement meets all of the following conditions:
 - (1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.
 - (2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.
 - (3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of which may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for kindergarten and grades 1 to 12, inclusive, in the public school district where the program is located, or operated only during periods when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, when appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and that satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(l) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:

(1) Is operated only during periods of the year when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections and Rehabilitation that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

(n) Any crisis nursery, as defined in subdivision (a) of Section 1516.

(o) This section shall remain in effect only until July 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2011, deletes or extends that date.

§ 1596.792. Exceptions to application of chapters 3.4, 3.5 and 3.6

Section operative Jan. 1, 2014. See, also, section operative until Jan. 1, 2014.

This chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any community care facility, as defined by Section 1502.

(d) Any family day care home providing care for the children of only one family in addition to the operator's own children.

(e) Any cooperative arrangement between parents for the care of their children when no payment is involved and the arrangement meets all of the following conditions:

(1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.

(2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.

(3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of which may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for kindergarten and grades 1 to 12, inclusive, in the public school district where the program is located, or operated only during periods when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, when appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and that satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(l) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:

(1) Is operated only during periods of the year when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

(n) This section shall become operative on July 1, 2011.

§ 1596.7925. Repealed

§ 1596.7926. Repealed

§ 1596.7927 Repealed

§ 1596.793. Application of chapters

This chapter and Chapters 3.5 (commencing with Section 1596.90 and 3.6 (commencing with Section 1597.30) do not apply to recreation programs conducted for children by the Girl Scouts, Boy Scouts, Boys Club, Girls Club, or Camp Fire, or similar organizations as determined by regulations of the department.

Child day care programs conducted by these organizations and the fees charged for that specific purpose are subject to the requirements of this chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30).

§ 1596.794. Department as liaison to child day care facilities

The department shall serve as the liaison to child day care facilities for the purposes of Sections 17608 to 17613, inclusive, of the Education Code.

§ 1596.795. Smoking; ordinance enforcement

(a) The smoking of tobacco in a private residence that is licensed as a family day care home shall be prohibited during the hours of operation as a family day care home and in those areas of the family day care home where children are present. Nothing in this section shall prohibit a city or county from enacting or enforcing an ordinance relating to smoking in a family day care home if the ordinance is more stringent than this section.

(b) The smoking of tobacco on the premises of a licensed day care center shall be prohibited.

§ 1596.796. Exceptions to payments required to be made to child care service providers; operation of section

Notwithstanding any other provision of law, payments are not required to be made to any person who provides child care services and is exempt from the licensing requirements of this chapter, Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) if that person either is known to have tuberculosis, or to have been convicted of any crime involving violence against, or abuse or neglect of, children.

This section shall not be construed to create an affirmative duty on any individual, government body, or other entity paying for child care to investigate the person to whom payments are being made nor shall it be construed to create any liability for failure to investigate that person.

To the extent that this section is inconsistent with federal law, it shall be inoperative.

§ 1596.797. Blood Glucose Testing; monitoring a minor child diagnosed with diabetes; insulin injections

(a) Blood glucose testing for the purposes of monitoring a minor child diagnosed with diabetes may be performed in a child day care facility in accordance with paragraph (6) of subdivision (b) of Section 1241 of the Business and Professions Code.

(b) Nothing in this section, or in any other provision of law, including, but not limited to, Section 1241 or 2058 of the Business and Professions Code, shall require an insulin injection to be administered to any child in a child day care facility.

§ 1596.798. Child day care facility staff administration of inhaled medication; requirements

(a) Notwithstanding any other provision of law, licensees and staff of a child day care facility may administer inhaled medication to a child if all of the following requirements are met:

(1) The licensee or staff person has been provided with written authorization from the minor's parent or legal guardian to administer inhaled medication and authorization to contact the child's health care provider. The authorization shall include the telephone number and address of the minor's parent or legal guardian.

(2) The licensee or staff person complies with specific written instructions from the child's physician to which all of the following shall apply:

(A) The instructions shall contain all of the following information:

(i) Specific indications for administering the medication pursuant to the physician's prescription.

(ii) Potential side effects and expected response.

(iii) Dose-form and amount to be administered pursuant to the physician's prescription.

(iv) Action to be taken in the event of side effects or incomplete treatment response pursuant to the physician's prescription.

(v) Instructions for proper storage of the medication.

(vi) The telephone number and address of the child's physician.

(B) The instructions shall be updated annually.

(3) The licensee or staff person that administers the inhaled medication to the child shall record each instance and provide a record to the minor's parent or legal guardian on a daily basis.

(4) Beginning January 1, 2000, a licensee or staff person who obtains or renews a pediatric first aid certificate pursuant to Section 1596.866 shall complete formal training designed to provide instruction in administering inhaled medication to children with respiratory needs. This training shall include, but not be limited to, training in the general use of nebulizer equipment and inhalers, how to clean the equipment, proper storage of inhaled medication, how a child should respond to inhaled medication, what to do in cases of emergency, how to identify side effects of the medication, and when to notify a parent or legal guardian or physician. This training shall be a component in the pediatric first aid certificate requirement as provided in Section 1596.8661.

(5) For a specified child, the licensee or staff person who administers inhaled medication has been instructed to administer inhaled medication by the child's parent or guardian.

(6) Beginning January 1, 2000, any training materials pertaining to nebulizer care that licensees or staff receive in the process of obtaining or renewing a pediatric first aid certificate

pursuant to paragraph (4) shall be kept on file at the child care facility. The materials shall be made available to a licensee or staff person who administers inhaled medication. This requirement shall only apply to the extent that training materials are made available to licensees or staff who obtain or renew a pediatric first aid certificate pursuant to paragraph (4).

(b) For purposes of this section, inhaled medication shall refer to medication prescribed for the child to control lung-related illness, including, but not limited to, local held nebulizers.

(c) Nothing in this section shall be interpreted to require a certificated teacher who provides day care pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code in a public school setting to administer inhaled medication.

§ 1596.799. Child care centers which offer exclusive program of services for which there is no contract or agreement between the parent and center for regular care of child, and for which no prearranged schedule for care of child exists; exemption from immunization requirements

(a) Notwithstanding Section 1597.05 or any other provision of law, any day care center that exclusively offers a program of services for which there is no contract or agreement between any parent and the center for the regular care of any child, and for which there is no prearranged schedule of care for any child, shall not be required to do either of the following:

(1) Verify children's immunization or tuberculosis testing.

(2) Maintain files regarding children's immunization or tuberculosis testing.

(b) Upon admission of a child, the parent shall sign an acknowledgment that he or she understands that verification of immunization and tuberculosis testing is not required for any child accepted in this type of program.

(c) This section shall not be construed to exempt a day care center from any other licensing requirement.

ARTICLE 2. ADMINISTRATION OF CHILD DAY CARE LICENSING

§ 1596.80. Child day care facilities, licenses

No person, firm, partnership, association, or corporation shall operate, establish, manage, conduct, or maintain a child care facility in this state without a current valid license therefore as provided in this act.

§ 1596.803. Child day care facility licenses; fees assessments; additional fees; use of revenues collected; grounds for forfeiture or denial

(a) An application fee adjusted by facility and capacity shall be charged by the department for the issuance of a license to operate a child day care facility. After initial licensure, a fee shall be charged by the department annually, on each anniversary of the effective date of the license. The fees are for the purpose of financing activities specified in this chapter. Fees shall be assessed as follows:

Fee Schedule

Facility Type	Capacity	Original Application	Annual Fee
Family Day Care	1-8	\$66	\$66
	9-14	\$127	\$127
Day Care Centers	1-30	\$440	\$220
	31-60	\$880	\$440
	61-75	\$1,100	\$550
	76-90	\$1,320	\$660
	91-120	\$1,760	\$880
	121+	\$2,200	\$1,100

(b)(1) In addition to fees set forth in subdivision (a), the department shall charge the following fees:

(A) A fee that represents 50 percent of an established application fee when an existing licensee moves the facility to a new physical address.

(B) A fee that represents 50 percent of the established application fee when a corporate licensee changes who has the authority to select a majority of the board of directors.

(C) A fee of twenty-five dollars (\$25) when an existing licensee seeks to either increase or decrease the licensed capacity of the facility.

(D) An orientation fee of twenty-five dollars (\$25) for attendance by any individual at a department-sponsored family child day care home orientation session, and a fifty dollar (\$50) orientation fee for attendance by any individual at a department-sponsored child day care center orientation session.

(E) A probation monitoring fee equal to the annual fee, in addition to the annual fee for that category and capacity for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(F) A late fee that represents an additional 50 percent of the established annual fee when any licensee fails to pay the annual licensing fee on or before the due date as indicated by postmark on the payment.

(G) A fee to cover any costs incurred by the department for processing payments including, but not limited to, bounced check charges, charges for credit and debit transactions, and postage due charges.

(H) A plan of correction fee of two hundred dollars (\$200) when any licensee does not implement a plan of correction on or prior to the date specified in the plan.

(2) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home licensed under this act.

(c)(1) The revenues collected from licensing fees pursuant to this section shall be utilized by the department for the purpose of ensuring the health and safety of all individuals provided care and supervision by licensees, and to support the activities of the licensing program, including, but not limited to, monitoring facilities for compliance with licensing laws and regulations pursuant to this act, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the annual Budget act in support of the

licensing program.

(2) The department shall not utilize any portion of these revenues sooner than 30 days after notification in writing of the purpose and use, as approved by the Department of Finance, to the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the committee in each house that considers appropriations for each fiscal year. The department shall submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(d) A child day care facility may use a bona fide business or personal check to pay the license fee required under this section.

(e) The failure of an applicant for licensure or a licensee to pay all applicable and accrued fees and civil penalties shall constitute grounds for denial or forfeiture of a license.

§ 1596.805. Specialized services; special permits

No person, firm, partnership, association, or corporation shall provide specialized services within a child day care facility in this state without first obtaining a special permit as provided in this act.

§ 1596.806. Exemption from square footage, toilet, isolation space, outdoor activity space, and fencing requirements

(a) A room used as a classroom by a schoolage child care program shall not be required to meet the square footage or toilet requirements for child day care centers if the program is operated on either of the following:

(1) A functioning school site in the same facilities that have housed school children during the day, before or after school hours, or before and after school hours.

(2) A functioning school site in facilities certified as usable as a classroom for instruction. A building owned by a school district, the state, or the schoolage child care program may meet the certification requirement if either of the following is provided to the department:

(A) Evidence that the building was approved as a classroom by the office of the State Architect.

(B) A certification statement signed by the superintendent of the schools, or his or her designee, in the district where the schoolage child care program is located, that the classroom building is of sufficient size to accommodate public instruction. The school district may make this certification regardless of the ownership of the classroom.

(b) School grounds, other than rooms used as classrooms, used by a schoolage child care program operated on a functioning school site pursuant to either paragraph (1) or (2) of subdivision (a) shall be exempt from all of the following requirements imposed by the department on child day care facilities:

(1) Fencing, outdoor activity space, toilet, and isolation space requirements.

(2) Requirements to have exclusive use of the outdoor activity space or exclusive use of children's rest rooms also used by students located on school grounds.

(c) The exemptions pursuant to subdivisions (a) and (b) shall continue during school vacation and intersession periods.

(d) For purposes of this section, "schoolage child care program" means a program for children who are four years and nine months or older and are currently enrolled in a school or

are dependent children living within the same household as a child attending a school, operated by an entity that contracts with the school to provide staff and program. "Schoolage child care program" includes, but is not limited to, a program pursuant to Article 22 (commencing with Section 8460) or Article 23 (commencing with Section 8485) of Chapter 2 of Part 6 of the Education Code.

§ 1596.807. Exemption from licensure; programs at public or private schools; allowance of additional children

The State Department of Social Services, shall allow an extended day care program, whether or not exempt from licensure pursuant to subdivision (h) of Section 1596.792, to serve additional children at that school site, so long as they are four years and nine months of age or older and the number of additional children, including dependent children living within the same household as a child attending that school, does not exceed 15 percent of the total enrollment in the extended day care program. In no case shall the enrollment of the extended day care program exceed the enrollment during the regular school day.

§ 1596.808. Beverages served by day care providers to children; requirements; exceptions for medical needs and beverages provided by parents or guardians; updated guidelines; inspections to determine compliance

(a) Commencing January 1, 2012, Except as provided in subdivision (b) and (c), a licensed child day care facility shall comply with all of the following requirements for beverages served by the day care provider to children in the provider's care:

(1) Whenever milk is served, serve only lowfat (1 percent) milk or nonfat milk to children two years of age or older.

(2) Limit juice to not more than one serving per day of 100-percent juice.

(3) Serve no beverages with added sweeteners, either natural or artificial. "Beverages with added sweeteners" either natural or artificial. "Beverages with added sweeteners" does not include infant formula or complete balanced nutritional products designed for children.

(4) Make clean and safe drinking water readily available and accessible for consumption throughout the day.

(b) If a child has a medical necessity documented by a physician that includes the need for "medical food" as defined by section 109971 of the Health and safety Code, a licensed child day care facility shall be exempt from complying with the requirements of subdivision (a). to the extent necessary to meet the medical needs of that child.

(c) This section shall not apply to beverages at a licensed child day care facility that are provided by a parent or legal guardian for his or her child.

(d) As the Dietary Guidelines for Americans, published jointly by the federal Department of health and Human Services and the federal Department of Agriculture, are updated every five years, the department may adapt the provisions of this section by bulletin, as necessary, so that the standards continue to reflect the most recent relevant nutrition science and continue to improve the health of children in child care.

(e) The department shall only determine compliance with this section during a

(f) regularly scheduled, authorized inspection, and shall not be required to conduct separate and independent visits.

§ 1596.809. Fire clearance approval; condition for licensure; notice to prospective applicants

A prospective applicant for licensure shall be notified at the time of the initial request for information regarding application for licensure that, prior to obtaining licensure, the facility shall secure and maintain a fire clearance approval for the local fire enforcing agency, as defined in Section 13244, or the State Fire Marshal, whichever has primary fire protection jurisdiction. The prospective applicant shall be notified of the provisions of Section 13235, relating to the fire safety clearance application. The prospective applicant for licensure shall be notified that the fire clearance shall be in accordance with state and local fire safety regulations.

§ 1596.81. Rules and regulations; applicability of licensing requirements

(a) The department shall adopt, amend, or repeal in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code any rules and regulations which may be necessary to carry out this act.

(b) Licensing requirements adopted pursuant to Section 1530 shall only continue to be applicable to day care centers, and requirements adopted pursuant to Section 1597.51 (now Section 1596.871) shall continue to be applicable to family day care homes, until the department adopts regulations pursuant to this chapter.

§ 1596.813. Children enrolled in family day care homes; immunization requirements; rules and regulations

The department shall adopt regulations regarding immunization requirements for children enrolled in family day care homes in accordance with Chapter 1 (commencing with Section 120325) of Part 2 of Division 105.

§ 1596.815. Review of department's regulations; clarification; correction of defects

The department shall, on or before December 31, 1991, review all child care regulations of the department with respect to clarifying or eliminating vagueness and shall issue revised regulations if necessary to correct those defects.

§ 1596.816. Manner of regulation of licensees

(a) The Community Care Licensing Division of the department shall regulate child care licensees through an organizational unit that is separate from that used to regulate all other licensing programs. The chief of the child care licensing branch shall report directly to the Deputy Director of the Community Care Licensing Division.

(b) All child care regulatory functions of the licensing division, including the adoption and interpretation of regulations, staff training, monitoring and enforcement functions, administrative support functions, and child care advocacy responsibilities shall be carried out by the child care licensing branch to the extent that separation of these activities can be accomplished without new costs to the department.

(c) Those persons conducting inspections of day care facilities shall meet qualifications approved by the State Personnel Board.

(d) The department shall notify the appropriate legislative committees whenever actual staffing levels of licensing program analysts within the child care licensing branch drops more than 10 percent below authorized positions.

(e) The budget for the child care licensing branch shall be included as a separate entry within the budget of the department.

§ 1596.817. Site visits; posting of notices; contents; citations for violations; duration of posting; civil penalties

(a) When the department conducts a site visit of a licensed child day care facility, the department shall post on, or immediately adjacent to, the interior side of the main door into the facility and adjacent to the postings required pursuant to section 1596.8595, a notice, written in at least 14-point type, that includes all of the following:

(1) The date of the site visit.

(2) Whether the facility was cited for violating any state standards or regulations as a result of the site visit and which of the following categories was cited:

(A) A violation that, if not corrected, will have a direct and immediate risk of health, safety, or personal rights of children in care.

(B) A violation that, if not corrected, could become a risk to the health, safety, or personal rights of children, a recordkeeping violation that would impact the care of children, or a violation that would impact those services required to meet children's needs.

(3) Whether the facility is required to post the site visit report for 30 consecutive days pursuant to Section 1596.8595.

(4) A statement explaining that copies of the site visit report, including, but not limited to, violations noted in subparagraph (B) of paragraph (2), may be obtained by contacting the department and the telephone number to call in order to obtain a copy of the site visit report.

(5) The name and telephone number of a person in the department who may be contacted for further information about the site visit report.

(b)(1) The notice posted pursuant to subdivision (a) shall remain posted for 30 consecutive days, except that a family day care home shall comply with the posting requirements contained in this subdivision only during the hours when clients are present.

(2) Failure by a licensed child day care facility or a family day care home to comply with paragraph (1) shall result in an immediate civil penalty of one hundred dollars (\$100).

§ 1596.818. Identification of violations with direct, immediate risk to children; final conclusion

(a) The department shall specify in its licensing report all violations that, if not corrected, will have a direct and immediate risk to the health, safety, or personal rights of children in care.

(b) The department shall complete all complaint investigations and place a note of final conclusion in the department's facility file, consistent with the confidentiality requirements of Section 1596.853, regardless of whether the licensee voluntarily surrendered his or her license.

§ 1596.82. Contracts with public agencies; licensing, approval, or consultation responsibilities; staff positions; reimbursements

The department may contract for state, county, or other public agencies to assume specified licensing, approval, or consultation responsibilities. If an agency also provides licensing, approval, or consultation responsibilities for the purpose of administering Chapter 3 (commencing with Section 1500), the agency shall maintain licensing staff positions distinct from those positions responsible for administering Chapter 3 (commencing with Section 1500). The department shall reimburse agencies for services performed pursuant to this section which shall not exceed actual cost.

§ 1596.83. Statement of mailing address; notice of change

An applicant or licensee shall file his or her mailing address, in writing, with the department and, shall notify the department, in writing, of any change within 10 calendar days.

§ 1596.84. Provisional licenses; required clearances; term; limited extension

The department may issue provisional licenses to operate day care facilities which the director determines are in substantial compliance with the provisions of the licensure requirements and the rules and regulations adopted pursuant thereto, provided, that no life safety risks are involved, as determined by the director. In determining whether any life safety risks are involved, the director shall require completion of all applicable fire clearances and criminal record clearances as otherwise required by the department's rules and regulations. The provisional license shall expire six months from the date of issuance, or at such earlier time as the director may determine. However, the director may extend the term of a provisional license for an additional six months time, if it is determined that more than six months will be required to achieve full compliance with licensing standards due to circumstances beyond the control of the applicant, provided all other requirements for a license have been met. In no case shall a provisional license be issued for more than 12 months.

§ 1596.841. Current roster of children provided care in facility required

Each child day care facility shall maintain a current roster of children who are provided care in the facility. The roster shall include the name, address, and daytime telephone number of the child's parent or guardian, and the name and telephone number of the child's physician. This roster shall be available to the licensing agency upon request.

§ 1596.842. Provider rights; approval and distribution

Following approval by the department of a list of provider rights, the Community Care Licensing Division shall print and distribute in person, to individuals or to groups, and by other appropriate methods of distribution, a list of provider rights which shall include, but not be limited to, the following:

(a) Site visit rights:

(1) The right to require licensing field staff to identify themselves.

(2) The right to be advised of the type of the visit, whether complaint, plan of correction, precertification, or some other type. When a site visit is made to investigate a complaint, the site

visit rights described in paragraphs (4) and (9) shall be applicable at the completion of the investigation.

(3) The right to be treated as a professional and with dignity and respect.

(4) The right to receive an accurate report of the evaluator's findings listing each observed deficiency. Each deficiency shall be separately numbered, so as to clearly indicate the number of deficiencies, shall be accompanied by a number that corresponds to a section of law or licensing regulation, and shall include a description of the evaluator's observation that led to the finding of a deficiency. The description of the evaluator's observation shall include a clear explanation of why the existing condition constitutes a deficiency, unless the description of the observation provides the explanation.

(5) The right to review licensing laws, regulations, and policy.

(6) The right to an impartial investigation of all complaints.

(7) The right, at the time of the visit, to determine and develop a plan of correction for deficiencies cited.

(8) The right to use the licensing report (LIC 809) as a means to agree or disagree with cited deficiencies.

(9) The right to an exit interview upon completion of the visit and to receive a signed copy of the LIC 809.

(10) The right to be informed on the LIC 809 of the evaluator's supervisor and his or her telephone number.

(11) The right of access to the public file on any facility and the right to purchase a copy at a reasonable cost.

(b) Initial appeal rights:

(1) The right, without prejudice, to appeal any decision, any failure to act according to law or regulation, or any failure to act within any specified timeline, through the licensing agency up to the deputy director.

(2) The right to request a meeting with district office administrators to discuss any licensing issue and with notice to bring any person to the meeting.

(3) The right to due process and the option of bringing a representative to any administrative action.

(c) The right to file a formal complaint, and receive a written response to that complaint within 30 days, for any licensing issue not covered by subdivision (b), including, but not limited to, inappropriate behavior of department employees.

(d) The department shall, by June 30, 1992, mail to all licensees a copy of this section and a full and complete copy of the appeals procedure developed to implement subdivision (b).

(e) The department shall, on all forms it requires or recommends that providers use, all notices of regulations or departmental policy, and all notices to implement this section, clearly label the department as the source of the material, including the name of the department, the name of the division responsible for implementing this chapter, and the address of that division.

§ 1596.843. Facility visit and compliant investigation; licensing reports; review of reports

(a) Whenever a facility visit and a complaint investigation are conducted at the same time by the department, a separate licensing report shall be used to document the complaint investigation.

(b) The department shall review a random sample of licensing reports to evaluate the consistency of the application of regulations by different licensing program analysts.

§ 1596.844. Requests of licensees to review notices of deficiency or penalty; written acknowledgment

The department shall acknowledge in writing within 10 days of receipt, the request of a licensee to review notices of deficiency or penalty, or both.

§ 1596.845. Orientation; outline

Prior to the issuance of a new license or special permit pursuant to this chapter, Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) the applicant shall attend an orientation given by the department. The orientation given by the department shall outline all of the following:

- (a) The rules and regulations of the department applicable to child day care facilities.
- (b) The scope of operation of a child day care facility.
- (c) The responsibility entailed in operating a child day care facility.
- (d) Information about the Healthy Schools Act of 2000 and integrated pest management practices.

§ 1596.846. Baby walkers

(a) The Legislature finds and declares all of the following:

(1) The American Academy of Pediatrics, after reviewing the data from all the studies, concluded that baby walkers are dangerous and should be banned from all manufacturing, sale, and distribution in the United States.

(2) A jury in San Mateo County, California has determined that baby walkers are inherently unsafe and are not capable of design changes in order to prevent accidents.

(3) Citing numerous ways in which babies can be injured, Consumer Reports found that, "With a capacity to move as fast as five feet per second, a baby walker can propel your baby faster than you can rescue him."

(4) During the past 15 years, one particular product, a baby walker, has been shown to be associated with increasing numbers of injuries to infants, with the most recent reporting year, 1991, indicating that 27,800 children under the age of two years had to be admitted to an emergency room in the United States for injuries associated with a baby walker.

(b) A baby walker shall not be kept or used on the premises of a child day care facility.

(c) A "baby walker" means any article described in paragraph (4) of subdivision (a) of Section 1500.86 of Part 1500 of Title 16 of the Code of Federal Regulations.

(d) Section 1596.890 shall not apply to this section.

§ 1596.847. Child day care facilities; prohibition against unsafe cribs; information on sudden infant death syndrome; legal actions

(a) A child day care facility shall not use or have on the premises, on or after July 1, 1998, a full-size or non-full-size crib that is unsafe for any infant using the crib, as described in Article 1 (commencing with Section 24500) of Chapter 4.7 of Division 20. This subdivision shall not apply to any antique or collectible crib if it is not used by, or accessible to, any child in

the child day care facility.

(b) The State Department of Social Services shall provide information and instructional materials regarding sudden infant death syndrome, explaining the medical effects upon infants and young children and emphasizing measures that may reduce the risk, free of charge to any child care facility licensed to provide care to children under the age of two years. This shall occur upon licensure and, on a one-time basis only, at the time of a regularly scheduled site visit.

(c) To the maximum extent practicable, the materials provided to child care facilities shall substantially reflect the information contained in materials approved by the State Department of Health Services for public circulation. The State Department of Health Services shall make available, to child care facilities, free of charge, information in camera-ready typesetting format. Nothing in this section prohibits the State Department of Social Services from obtaining free and suitable information from any other public or private agency. The information and instructional materials provided pursuant to this section shall focus upon the serious nature of the risk to infants and young children presented by sudden infant death syndrome.

(d) The requirement that informational and instructional materials be provided pursuant to this section applies only when those materials have been supplied to those persons or entities that are required to provide the materials. The persons or entities required to provide these materials shall not be subject to any legal cause of action whatsoever based on the requirements of this section.

(e) For persons or agencies providing these materials pursuant to this section, this section does not require the provision of duplicative or redundant informational and instructional materials.

§ 1596.85. Day care centers and family day care homes; sale or exchange of licenses and special permits

No license or special permit issued pursuant to Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30) shall have any property value for sale or exchange purposes and no person, including any owner, agent, or broker, shall sell or exchange the license or special permit for any commercial purpose.

§ 1596.851. Prior license revocation; cessation of review

(a)(1) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a license under this act or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.01 (commencing with Section 1568.01), or Chapter 3.3 (commencing with Section 1569) and that the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation.

(2) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the

revocation.

(3) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant was excluded from a facility licensed by the department pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, the department shall cease any further review of the application unless the excluded individual has been reinstated pursuant to Section 11522 of the Government Code by the department.

(b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall cease further review of the application as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing as specified in Section 1596.879 and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which have been corrected or are no longer in existence. The cessation of review shall not constitute a denial of the application.

(c) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall cease further review of the application as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(d) The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other law. (Editor's Note: Should be Section 1596.879.)

§ 1596.852. Inspections; notice

Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, this act or the regulations adopted by the department pursuant to the act.

§ 1596.853. Request for inspection; complaints; preliminary review; notification of resource and referral programs; notification of Child Development Division

(a) Any person may request an inspection of any child day care facility in accordance with the California Child Day Care Facilities Act by transmitting to the department notice of an alleged violation of applicable requirements prescribed by the statutes or regulations of this state. A complaint may be made either orally or in writing.

(b) The substance of the complaint shall be provided to the licensee no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall disclose the name of any person mentioned in the complaint, except the name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter.

(c) Upon receipt of a complaint, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, the department shall make an onsite inspection within 10 days after receiving the complaint, except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be promptly informed of the department's proposed course of action. If the department determines that the complaint is without a reasonable basis, then the complaint shall be marked confidential and shall not be disclosed to the public. The child-care provider shall be notified in writing within 30 days of the dismissal that the complaint has been dismissed.

(d)(1) The department shall notify a resource and referral program funded under Section 8210 of the Education Code, as follows:

(A) Upon the issuance or denial of a license for a child day care facility within the resource and referral program's jurisdiction.

(B) Within one business day of a finding that physical or sexual abuse has occurred at a child day care facility within the resource and referral program's jurisdiction.

(C) Within two business days of the issuance of a temporary suspension order, or the revocation or placement on probation of a license for a child day care facility within the resource and referral program's jurisdiction.

(D) The department shall also notify the resource and referral program of the final resolution of any action specified in this paragraph.

(2) With the exception of parents seeking local day care service, any other entity specified in subdivision (b) of Section 1596.86 may request that the department provide the notification described in paragraph (1).

(e) When the department substantiates an allegation that it deems to be serious in a facility funded by the Child Development Division of the State Department of Education pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code it shall notify the Child Development Division.

§ 1596.8535. Time for inspection or site visit or child daycare facility; department regulations for notification of period of inactivity; inactive status of licensees

(a) Notwithstanding any other provision of law, the department shall conduct any

authorized inspection, announced site visit, or unannounced site visit of any child daycare facility only during the period beginning one hour before and ending one hour after the facility's normal business hours or at any time childcare services are being provided. This subdivision shall not apply to the investigation of any complaint received by the department if the department determines that an inspection or site visit outside the time period beginning one hour before, and ending one hour after, the facility's normal operating hours is necessary to protect the health or safety of any child in the facility.

(b) If a facility is closed for an extended period of time, the department may not perform any inspection, announced site visit, or unannounced site visit until the facility has reopened, subject to subdivision (a).

(c) The department shall develop regulations establishing a procedure by which a licensee of any childcare facility may notify the licensing agency of a planned period of inactivity in the operation of the facility. The department shall also develop regulations establishing a procedure by which the department shall determine if it will grant inactive status to a licensee after receiving this notice from the licensee.

(d) If the department grants inactive status to a licensee pursuant to subdivision (c), the license shall not be valid during the period of inactivity in the operation of the facility, the licensee shall be responsible for the payment of annual licensing fees and for maintaining licensing standards upon reactivation of operation of the facility, and the department's timeframe for required site visits shall be adjusted accordingly. However, if the department believes the licensee is operating during a period in which the department has granted inactive status to the licensee, the department may enter the facility for any inspection permitted by law.

(e) This section shall be operative July 1, 2003.

§ 1596.854. Disciplinary action; effect of withdrawal of application, suspension, expiration, forfeiture or revocation of license or permit

The withdrawal of an application for a license or a special permit after it has been filed with the department shall not, unless the department consents in writing to the withdrawal, deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license or a special permit upon any ground provided by law or to enter an order denying the license or special permit upon any such ground.

The suspension, expiration, or forfeiture by operation of law of a license or a special permit issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee or holder of a special permit upon any ground provided by law or to enter an order suspending or revoking the license or special permit or otherwise taking disciplinary action against the licensee or holder of a special permit on any such ground.

§ 1596.855. Regulations and statutory provider rights; provision of copies to applicants; regulations revisions; provision to association of child care agencies; versions in Spanish and other languages

(a) Upon attendance at an orientation meeting, as described in Section 1596.845, an applicant shall be provided, without charge, a printed copy of all applicable regulations by the

department, a copy of Section 1596.842, and a copy of the appeals procedure specified in subdivision (b) of Section 1596.842. The department shall inform applicants of the availability of a Spanish language version of these materials and shall provide it to the applicant upon request by the applicant.

(b) The department shall mail, without charge, printed copies of all revisions of regulations to all resource and referral programs funded under Section 8210 of the Education Code, and to any association of child care agencies which requests to receive revisions of regulations. Upon request, the department shall mail, without charge, a version of these regulations in Spanish, and may mail, without charge, a version of these regulations in other languages, as available.

(c) The versions in Spanish and in other languages shall be provided as a convenience to the reader. In the event of a discrepancy between these versions and the English version, the English version shall prevail.

§ 1596.8555. Posting of License

A licensed child day care facility shall post its license in a prominent, publicly accessible location in the facility. A family day care home shall comply with this posting requirement during the hours when clients are present.

§ 1596.856. Denial of license

If the department finds that the applicant is not in compliance with this act or the regulations promulgated under this act, the department shall deny the applicant a license.

§ 1596.857. Rights of parent or guardian to inspect facility without advance notice; informing parents and guardians; prohibition of retaliation; violations; penalty; Family Child Care Home Notification of Parent Rights; registered sex offenders

(a) Upon presentation of identification, the responsible parent or guardian of a child receiving services in a child day care facility has the right to enter and inspect the facility without advance notice during the normal operating hours of the facility or at any time that the child is receiving services in the facility. Parents or guardians when inspecting shall be respectful of the children's routines and programmed activities. The facility shall inform parents and guardians of children receiving services in the facility of the right of the parents and guardians to inspect the facility pursuant to this section.

(b) No child day care facility shall discriminate or retaliate against any child or parent or guardian on the basis or for the reason that the parent or guardian has exercised his or her right under this section to inspect the facility or has lodged a complaint with the department against a facility.

(c) If any child day care facility denies a parent or legal guardian the right to enter and inspect a facility or retaliates, the department shall issue the facility a warning citation. For any subsequent violation of this right, the department may impose a civil penalty upon the facility of fifty dollars (\$50) per violation. The department may take any appropriate action, including license revocation.

(d) Each child day care facility shall permanently post in a facility location accessible to parents and guardians a written notice, available from the department, of the right to make an inspection pursuant to this section and the prohibition against retaliation and the right to file a

complaint. In addition, this notice shall include information stating that the specified registered sex offender database is available to the public via an Internet Web site maintained by the Department of Justice as www.meganslaw.ca.gov. The department shall make this written notice available to child day care facility licensees, and shall include on this notice a statement of the right of the parents and guardians to review licensing reports of facility visits and substantiated complaints against the facility on the site of the facility, pursuant to Section 1596.859.

(e) At the time of acceptance of each child into a child day care facility after January 1, 2007, the licensee shall provide the child's parent or guardian with a copy of the Family Child Care Home Notification of Parents' Rights provided by the State Department of Social Services, which shall include information stating that the specified registered sex offender database is available to the public via an Internet Web site maintained by the Department of Justice as www.meganslaw.ca.gov.

(f) Upon delivery of the Family Child Care Home Notification of Parents' Rights required pursuant to subdivision (e) to a parent or guardian, a provider is not required to provide any additional information regarding the location and proximity of registered sex offenders who reside in the community where the child care facility or family day care home is located. The provision of the information required by this section to parents and guardians of a child in their care shall not subject the provider to any liability or cause of action against the provider by a registered sex offender identified in the database.

(g) Notwithstanding any other provision of this section, the person present who is in charge of a child day care facility may deny access to an adult whose behavior presents a risk to children present in the facility and may deny access to noncustodial parents or guardians if so requested by the responsible parent or legal guardian.

§ 1596.858. Forfeiture of license by operation of law

A license shall be forfeited by operation of law prior to its expiration date when any one of the following occurs:

(a) The licensee sells or otherwise transfers the facility or facility property, except when change of ownership applies to transferring of stock when the facility is owned by a corporation, and when the transfer of stock does not constitute a majority change in ownership.

(b) The licensee surrenders the license to the department.

(c) The licensee moves the facility from one location to another. The department shall develop regulations to ensure that the facilities are not charged a full licensing fee and do not have to complete the entire application process when applying for license for the new location.

(d) The licensee is convicted of an offense specified in Section 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) The licensee dies. If an adult relative notifies the department of his or her desire to continue operation of the facility and submits an application, the department shall expedite the application. The department shall promulgate regulations for expediting applications submitted pursuant to this subdivision.

(f) The licensee abandons the facility.

§ 1596.859. Public access to licensing reports or other public licensing documents; referral request; right to view licensing information of facility; advisement form; compliance verification

(a)(1) Each licensed child day care facility shall make accessible to the public a copy of any licensing report or other public licensing document pertaining to the facility that documents a facility visit a substantiated complaint investigation, a conference with a local licensing agency management representative and the licensee in which issues of non-compliance are discussed, or a copy of an accusation indicating the department's intent to revoke the facility's license.

An individual licensing report and other licensing documents shall not be required to be maintained beyond three years from the date of issuance, and shall not include any information that would not have been accessible to the public through the State Department of Social Services Community Care Licensing Division.

(2)(A) Every child care resource and referral program established pursuant to Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code, and every alternative payment program established pursuant to Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code shall advise every person who requests a child care referral of his or her right to the licensing information of a licensed child day care facility required to be maintained at the facility pursuant to this section and to access any public files pertaining to the facility that are maintained by the State Department of Social Services Community Care Licensing Division.

(B) A written or oral advisement in substantially the following form, with the telephone number of the local licensing office included, will comply with the requirements of subparagraph (A):

"As a parent, you have the right to get information about any substantiated or inconclusive complaints about a child care provider that you select for your child. That information is public and you can get it by calling the local licensing office. This telephone number is ____."

(b) Within 30 days after the date specified by the department for a licensee to correct a deficiency, the department shall provide the licensee with a licensing report or other appropriate document verifying compliance or noncompliance. Notwithstanding any other provision of law, and with good cause, the department may provide the licensee with an alternate timeframe for providing the licensing report or other appropriate document verifying compliance or noncompliance. If the department provides the licensee with an alternate timeframe, it shall also provide the reasons for the alternate timeframe, in writing. The licensee shall make this documentation available to the public.

§ 1596.8595. Posting licensing report by child care facility or home; duration of posting; civil penalty for failure to comply; reports to be provided to parents or guardian of each child receiving services

(a)(1) Each licensed child day care facility shall post a copy of any licensing report pertaining to the facility that documents either a facility visit or a complaint investigation that results in a citation for a violation that, if not corrected, will create a direct and immediate risk to the health, safety, or personal rights of children in care. The licensing report provided by the department shall be posted immediately upon receipt, adjacent to the postings required pursuant to Section 1596.817 and on, or immediately adjacent to, the interior side of the main door to the facility and shall remain posted for 30 consecutive days.

(2) A family day care home shall comply with the posting requirements contained in paragraph (1) during the hours when clients are present.

(3) Failure to comply with paragraph (1) shall result in an immediate civil penalty on one

hundred dollars (\$100).

(b)(1) Notwithstanding subdivision (b) of Section 1596.859, the licensee shall post a licensing report or other appropriate document verifying the licensee's compliance with the department's order to correct a deficiency that is subject to posting pursuant to paragraph (1) of subdivision (a). The licensing report or other document shall be posted immediately upon receipt, adjacent to the posting required pursuant to Section 1596.817, on, or immediately adjacent to, the interior side of the main door into the facility and shall be posted for a period of 30 consecutive days.

(2) A family day care home shall comply with the posting requirements contained in paragraph (1) during the hours when clients are present.

(3) Failure to comply with paragraph (1) shall result in an immediate civil penalty of one hundred dollars (\$100).

(c)(1) A licensed child day care facility shall provide to the parents or guardians of each child receiving services in the facility copies of any licensing report that documents any Type A citation that represents an immediate risk to the health, safety, or personal rights of children in care as set forth in paragraph (1) of subdivision (a) of Section 1596.893b.

(2) Upon enrollment of a new child in a facility, the licensee shall provide to the parents or legal guardians of the newly enrolling child copies of any licensing report that the licensee has received during the prior 12-month period that documents any Type A citation that represents an immediate risk to the health, safety, or personal rights of children in care as set forth in paragraph (1) of subdivision (a) of Section 1596.893b.

(3) The licensee shall require each recipient of the licensing report described in paragraph

(1) pertaining to a complaint investigation to sign a statement indicating that he or she has received the document and the date it was received.

(4) The licensee shall keep verification of receipt in each child's file.

(d)(1) A licensed child day care facility shall provide to the parents or legal guardians of each child receiving services in the facility copies of any licensing document pertaining to a conference conducted by a local licensing agency management representative with the licensee in which issues of noncompliance are discussed.

(2) Upon enrollment of a new child in a facility, the licensee shall provide to the parents or legal guardians of the newly enrolling child copies of any licensing document that the licensee has received during the prior 12-month period that pertains to a conference conducted by a local licensing agency management representative with the licensee in which issues of noncompliance are discussed.

(3) The licensee shall require each recipient of the licensing document pertaining to a conference to sign a statement indicating that he or she has received the document and the date it was received.

(4) The licensee shall keep verification of receipt in each child's file.

§ 1596.86. Publication and use of list of facilities

(a) The director shall annually publish and make available to interested persons a list or lists covering all licensed child day care facilities, other than small family day care homes, and the services for which each facility has been licensed or issued a special permit. The lists shall also specify the licensed capacity of the facility and whether it is licensed by the department or by another public agency.

(b) To encourage the recruitment of small family day care homes and protect their

personal privacy, the department shall prevent the use of lists containing names, addresses and other identifying information of facilities identified as small family day care homes, except as necessary for administering the licensing program, facilitating the placement of children in these facilities, and providing the names and addresses to resource and referral agencies funded by the State Department of Education, food and nutrition programs funded by the State Department of Education, alternative payment programs funded by the State Department of Education, county programs under the Greater Avenues for Independence Act of 1985 (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code), family day care organizations, or specialized health care service plans licensed under the Knox-Keene Health Care Service Plan Act of 1975, as contained in Chapter 2.5 (commencing with Section 1340), which provide employee assistance program services that include child care referral services. Upon request, parents seeking local day care services may receive the names and telephone numbers of local small family day care providers.

(c) The department in consultation with the Child Development Division of the State Department of Education shall adopt regulations relating to the confidentiality of information provided pursuant to subdivision (b) on small family day care homes. These regulations shall include procedures for updating lists or other information on small family day care providers to ensure referral only to licensed homes in good standing with the department. Any person or entity violating the regulations under this subdivision may be denied access by the department to information on small family day care homes and shall be reported by the department to the appropriate funding or licensing department.

§ 1596.861. License number; use in advertisements; publications, or announcements

(a) Each child day care facility licensed under this chapter, Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) shall reveal its license number in all advertisements, publications, or announcements made with the intent to attract clients.

(b) Advertisements, publications, or announcements subject to the requirements of subdivision (a) include, but are not limited to, those contained in the following:

- (1) Newspaper or magazine.
- (2) Consumer report.
- (3) Announcement of intent to commence business.
- (4) Telephone directory yellow pages.
- (5) Professional or service directory.
- (6) Radio or television commercial.

§ 1596.862. Enrollment or retention of nonminor student at schoolage child care center: approval or denial of request; contents of request

(a) The department may approve or deny a written request for enrollment or retention of a nonminor student at a schoolage child care center. The department may approve a request for enrollment or retention of a nonminor student if the department determines the schoolage child care center can meet the needs of the nonminor student and enrollment or retention of the nonminor student is not detrimental to the health and safety of the nonminor student.

(b) (1) For the purposes of retention, if a request, as described in subdivision (c), is submitted to the department at least 30 days prior to the child's 18th birthday, the nonminor

student shall be retained at a schoolage child care center, unless the request is denied in writing by the department.

(c) A written request from a schoolage child care center for enrollment or retention of a nonminor student shall include all of the following:

(1) Confirmation that the licensee conducted a personal interview of the nonminor student or the nonminor student's authorized representative, if applicable, and a written statement from the licensee that assesses both of the following:

(A) Whether the enrollment or retention of the nonminor student would present a threat to the physical health, mental health, or safety of the nonminor student and others at the schoolage child care center.

(B) Whether the needs of the nonminor student can be met by the schoolage child care center.

(2) A copy of the nonminor student's current individualized education program and any other information requested by the department.

(d) A nonminor student enrolled or retained pursuant to this section shall be exempt from the fingerprinting and criminal record clearance requirements in Section 1596.871 and otherwise applicable regulations.

(e) An approved request may be terminated by the department and a citation of deficiency, an assessment of civil penalties, or discipline of the licensee pursuant to Section 1596.885 or Section 1596.886, or any combination thereof, may result if the licensee fails to comply with applicable laws.

(f) The department may adopt regulations necessary to implement this section.

§ 1596.865. Child health care training

It is the intent of the Legislature to encourage any person who provides child care in a child day care facility licensed pursuant to this chapter, Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) to have the following elementary health care training:

(a) Cardiopulmonary resuscitation.

(b) Pediatric first aid.

(c) Preventive health practices, including food preparation and sanitation practices that reduce the spread of infectious diseases.

§ 1596.866. Additional health and safety training; condition of licensure

(a)(1) In addition to other required training, at least one director or teacher at each day care center, and each family day care home licensee who provides care, shall have at least 15 hours of health and safety training.

(2) The training shall include the following components:

(A) Pediatric first aid.

(B) Pediatric cardiopulmonary resuscitation (CPR).

(C) A preventative health practices course or courses that include instruction in the recognition, management, and prevention of infectious diseases, including immunizations, and prevention of childhood injuries.

(3) The training may include instruction in sanitary food handling, child nutrition, emergency preparedness and evacuation, caring for children with special needs, and identification and reporting of signs and symptoms of child abuse.

(b) Day care center directors and licensees of family day care homes shall ensure that at least one staff member who has a current course completion card in pediatric first aid and pediatric CPR issued by the American Red Cross or the American Heart Association, or by a training program that has been approved by the Emergency Medical Services Authority pursuant to this section and Section 1797.191, shall be onsite at all times when children are present at the facility, and shall be present with the children when children are offsite from the facility for facility activities. Nothing in this subdivision shall be construed to require, in the event of an emergency, additional staff members, who are onsite when children are present at the facility, to have a current course completion card in pediatric first aid and pediatric CPR.

(c)(1) The completion of health and safety training by all personnel and licensees described in subdivision (a) shall be a condition of licensure.

(2) Training in pediatric first aid and pediatric CPR by persons described in subdivisions (a) and (b) shall be current at all times. Training in preventive health practices as described in subparagraph (C) of paragraph (2) of subdivision (a) is a one-time-only requirement for persons described in subdivision (a).

(3) The department shall issue a provisional license for otherwise qualified applicants who are not in compliance with this section. This provisional license shall expire 90 days after the date of issuance and shall not be extended.

(4) A notice of deficiency shall be issued by the department at the time of a site visit to any licensee who is not in compliance with this section. The licensee shall, at the time the notice is issued, develop a plan of correction to correct the deficiency within 90 days of receiving the notice. The facility's license may be revoked if it fails to correct the deficiency within the 90-day period. Section 1596.890 shall not apply to this paragraph.

(d) Completion of the training required pursuant to subdivisions (a) and (b) shall be demonstrated, upon request of the licensing agency, by the following:

(1) Current pediatric first aid and pediatric CPR course completion cards issued by the American Red Cross or the American Heart Association, or by a training program approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(2)(A) A course completion card for a preventive health practices course or courses as described in subparagraph (C) of paragraph (2) of subdivision (a) issued by a training program approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(B) Persons who, prior to the date on which the amendments to this section enacted in 1998 become operative, have completed a course or courses in preventive health practices as described in subparagraph (C) of paragraph (2) of subdivision (a), and have a certificate of completion of a course or courses in preventive health practices, or certified copies of transcripts that identify the number of hours and the specific course or courses taken for training in preventive health practices, shall be deemed to have met the training in preventive health practices.

(3) In addition to training programs specified in paragraphs (1) and (2), training programs

or courses in pediatric first aid, pediatric CPR, and preventive health practices offered or approved by an accredited college or university are considered to be approved sources of training that may be used to satisfy the training requirements of paragraph (2) of subdivision (a). Completion of this training shall be demonstrated to the licensing agency by a certificate of course completion, course completion cards, or certified copies of transcripts that identify the number of hours and the specified course or courses taken for the training as defined in paragraph (2) of subdivision (a).

(e) The training required under subdivision (a) shall not be provided by a home study

course. This training may be provided through in-service training, workshops, or classes.

(f) All personnel and licensees described in subdivisions (a) and (b) shall maintain current course completion cards for pediatric first aid and pediatric CPR issued by the American Red Cross or the American Heart Association, or by a training program approved by the Emergency

Medical Services Authority pursuant to Section 1797.191, or shall have current certification in pediatric first aid and pediatric CPR from an accredited college or university in accordance with paragraph (3) of subdivision (d).

(g) The department shall have the authority to grant exceptions to the requirements imposed by this section in order to meet the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(h) The department shall adopt regulations to implement this section.

§ 1596.8661. Pediatric first aid training in administration of inhaled medication

(a) For purposes of the training required pursuant to paragraph (4) of subdivision (a) of Section 1596.798, pediatric first aid training pursuant to Section 1596.866 shall include a component of training in the administration of inhaled medication described in paragraph (4) of subdivision (a) of Section 1596.798.

(b) The Emergency Medical Services Authority shall establish, consistent with Section 1797.191, minimum standards for a component of pediatric first aid training that satisfies the requirements of paragraph (4) of subdivision (a) of Section 1596.798. For purposes of this subdivision, the Emergency Medical Services Authority is encouraged to consult with organizations and providers with expertise in administering inhaled medication and nebulizer care, including, but not limited to, the American Lung Association, respiratory therapists, and others.

§ 1596.867. Disaster plan; earthquake preparedness checklist; construction of section

(a) All child day care facilities, as defined in Section 1596.750, shall include an Earthquake Preparedness Checklist as an attachment to the disaster plan prescribed by Section 1596.95 or 1597.54. However, the Earthquake Preparedness Checklist shall not be considered a requirement for obtaining or maintaining a license for a child day care center or family day care home. The Earthquake Preparedness Checklist shall be made accessible to the public at the child day care center, or family day care home. The licensing agency shall not monitor or be responsible for enforcing any provision contained in the Earthquake Preparedness Checklist or ensuring that the checklist is made accessible to the public.

(b) The Earthquake Preparedness Checklist shall not exceed two typewritten pages and the department may add to or delete from the list, as it deems appropriate. The checklist may include, but not be limited to, all of the procedures that are listed in the following proposed Earthquake Preparedness Checklist. A licensee of a child day care center or family day care home shall have the option of selecting from the checklist the procedures, if any, the licensee chooses to use in the child day care center or family day care home.

Earthquake Preparedness Checklist (EPC)*

Eliminate potential hazards in classrooms and throughout the site:

- _____ Bolt bookcases in high traffic areas securely to wall studs
- _____ Move heavy books and items from high to low shelves
- _____ Secure and latch filing cabinets
- _____ Secure cabinets in high traffic areas with child safety latches
- _____ Secure aquariums, computers, typewriters, TV-VCR equipment to surfaces, such as by using Velcro tabs
- _____ Make provisions for securing rolling portable items such as TV-VCRs, pianos, refrigerators
- _____ Move children's activities and play areas away from windows, or protect windows with blinds or adhesive plastic sheeting
- _____ Secure water heater to wall using plumber's tape
- _____ Assess and determine possible escape routes

Establish a coordinated response plan involving all of the following:

Involving children:

- _____ Teach children about earthquakes and what to do (see resource list below)
- _____ Practice "duck, cover, and hold" earthquake drills under tables or desks no less than 4 times a year

Involving parents:

- _____ Post, or make available to parents copies of the school earthquake safety plan (including procedures for reuniting parents or alternate guardians with children, location of planned evacuation site, method for leaving messages and communicating)
- _____ Enlist parent and community resource assistance in securing emergency supplies or safeguarding the child day care site:
 - _____ store a 3-day supply of nonperishable food (including juice, canned food items, snacks, and infant formula)
 - _____ store a 3-day supply of water and juice
 - _____ store food and water in an accessible location, such as portable plastic storage containers
 - _____ store other emergency supplies such as flashlights, a radio with extra batteries, heavy gloves, trash bags, and tools
 - _____ maintain a complete, up-to-date listing of children, emergency numbers, and contact people for each classroom stored with emergency supplies

Involving child day care personnel and local emergency agencies:

- _____ Identify and assign individual responsibilities for staff following an earthquake (including accounting for and evacuating children, injury control, damage assessment)
- _____ Involve and train all staff members about the earthquake safety plan, including location and procedure for turning off utilities and gas
- _____ Contact nearby agencies (including police, fire, Red Cross, and local government) for information and materials in developing the child day care center earthquake safety plan

*For more free resources contact:

- (1) Federal Emergency Management Agency (FEMA)
- (2) California Emergency Management Agency (Cal EMA)
- (3) Red Cross

(c) Nothing in this section shall be construed to prevent the adoption or enforcement of earthquake safety standards for child day care facilities by local ordinance.

(d) Nothing in this section shall be construed to prevent the department from adopting or

enforcing regulations on earthquake safety or making earthquake safety drills mandatory.

§ 1596.869. Directors of combination child day care facilities; inclusion in teachers-child ratio

Directors of combination child day care facilities shall be included in the teacher-child ratio during periods when they are actively supervising children and on the same basis that any other director of a day care center may be included in the teacher-child ratio.

§ 1596.87. Staff development and training program

The department shall institute a staff development and training program within the organizational structure to develop among staff the knowledge, understanding of children and child care, and regulatory administration necessary to successfully carry out this act. Specifically, the department shall do all of the following:

(a) Provide staff with 36 hours of training per year that reflect the unique needs of children. The training shall include training relating to regulation administration, including communication skills, writing skills, and human relations skills.

(b) Find ways to encourage applications from individuals with child care provider experience or educational backgrounds applicable to the provision of child care.

(c) Provide new staff with comprehensive training within the first six months of employment. This training shall, at a minimum, include the following core areas: administrative action process, client populations, conducting facility visits, cultural awareness, documentation skills, facility operations, human relation skills, interviewing techniques, investigation processes, and regulation administration.

This program shall also provide new staff who have earned fewer than 16 semester units in child development or early childhood education from an accredited college at least 40 hours of preservice training in child development or early childhood education.

(d) Submit for approval to the advisory committee established in Section 8286 of the Education Code a plan for meeting the provisions of subdivisions (a) and (c).

§ 1596.871. Fingerprints and criminal record information of individuals in contact with child day care facility clients; exemptions; criminal records clearances

The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a child day care facility.

(a)(1) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision(b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section

273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003-04 through 2011-12 fiscal years, inclusive, neither the Department of Justice nor the department may charge a fee for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice, and the Federal Bureau of Investigation, through the Department of Justice for a state and federal level criminal offender record information search, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(b)(1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a child, residing in the facility.

(C) Any person who provides care and supervision to the children.

(D) Any staff person, volunteer, or employee who has contact with the children.

(i) A volunteer providing time-limited specialized services, shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the facility, and the volunteer is not left alone with children in care.

(ii) A student enrolled or participating at an accredited educational institution shall be exempt from the requirements of this subdivision if the student is directly supervised by the

licensee or a facility employee with a criminal record clearance or exemption, the facility has an agreement with the educational institution concerning the placement of the student, the student spends no more than 16 hours per week at the facility, and the student is not left alone with children in care.

(iii) A volunteer who is a relative, legal guardian, or foster parent of a client in the facility shall be exempt from the requirements of this subdivision.

(iv) A contracted repair person retained by the facility, if not left alone with children in care, shall be exempt from the requirements of this subdivision.

(v) Any person similar to those described in this subdivision, as defined by department in regulations.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(H) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal record clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(I) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal record clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(2) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

(c)(1)(A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(B) These fingerprint images for the purpose of obtaining a permanent set of fingerprints shall be electronically submitted to the Department of Justice in a manner approved by the State Department of Social Services and to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a

deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886. The State Department of Social Services may assess civil penalties for continued violations permitted by Sections 1596.99 and 1597.62. The fingerprint images and related information shall then be submitted to the department for processing. Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprints were illegible.

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. Any violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886. The department may assess civil penalties for continued violations, as permitted by Sections 1596.99 and 1597.62.

(2) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of

one hundred (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(3) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(4) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d)(1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f)(1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a child day care facility as specified in paragraphs (3), (4), and (5) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) or (b) of Section 451 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprint images.

(h)(1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice, only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B)(i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department-delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

§ 1596.8712. Exclusion of individual from licensed family day care home; notice

(a)(1) Whenever an individual is excluded by the department from a licensed family day care home, the department shall prepare and provide to the licensed family day care home from which the individual was excluded, within 45 days, an addendum to the notification of parent's rights form required by Section 102419 of Title 22 of the California Code of Regulations, clearly identifying the name or names of any individual or individuals who have been excluded from the licensed family day care home. The addendum shall also identify the existence and location of a public file maintained by the department explaining the reason for the exclusion.

(2) The department shall revise the addendum if the excluded individual is reinstated by the department pursuant to Section 11522 of the Government Code.

(b)(1) Immediately upon receipt of an addendum from the department, the licensee shall provide the parent or guardian of each child under the licensee's care or supervision with a copy of the addendum identifying the excluded individual or individuals. The licensee shall also obtain the signature of the parent or guardian indicating that the parent or guardian has received a copy of the addendum. A signed copy of the addendum shall be provided to the parent or guardian, and the original signed addendum shall be retained by the licensed day care home provider, and provided to the department during the regular inspection of the home, or at any time upon request of the department.

(2) This section shall apply to all children currently under the licensee's care or supervision, and to all children who come under the licensee's care or supervision after the implementation of this section.

(c) During its regular inspection of all licensed family day care homes where an individual or individuals have been excluded, the department shall verify that the licensee has obtained a signature from the parent or guardian of each child under the licensee's care or supervision indicating that the parent or guardian has been provided with the addendum identifying the excluded individual or individuals. The department may also request the signed

addenda from the licensee at any time.

(d) A licensee shall be assessed an immediate civil penalty of one hundred dollars (\$100) per violation, for failure to do any of the following:

(1) Provide a copy of the addendum to a parent or guardian of any child under the provider's care or supervision.

(2) Obtain a parent or guardian's signature indicating he or she has been provided with the addendum.

(3) Provide signed addenda to the department, when requested for all children under the provider's care.

(e) Failure to comply with this section shall constitute grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886.

(f) This section shall apply to any family day care home from which an individual is excluded after January 1, 2001.

(g) The Department shall promulgate regulations and policies, as necessary, to implement the provisions of this section by January 1, 2002.

§ 1596.8713. Criminal record information; fingerprint processing; fee

(a) The Department of Justice may charge a fee sufficient to cover its costs in providing services in accordance with Section 1596.871 to comply with the 14-day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1596.871.

(b)(1) Between July 1, 2000, and July 1, 2001, no fee shall be charged by the Department of Justice or the State Department of Social Services for any costs associated with obtaining a California or Federal Bureau of Investigation criminal record, or for conducting a child abuse index check, of a volunteer at a child care facility who is required to be fingerprinted pursuant to subdivision (b) of Section 1596.871, provided that the exemption does not cause an increase in fees for other providers.

(2) On or after July 1, 2001, no fee shall be charged for the purposes specified in paragraph (1) if funds for those purposes are appropriated in the annual Budget Act and the exemption does not cause an increase in fees for other providers.

(3) For purposes of this subdivision, "volunteer" means a person who provides services at a child care facility and does not receive any payment of a salary or hourly wage in exchange for these services.

§ 1596.8714. Review of criminal background check requirements; workgroup

On or before March 1, 2000, the State Department of Social Services shall convene a workgroup to review current criminal background check requirements and processes for screening care providers. The workgroup shall study and make recommendations concerning improving the coordination of the different populations who are required to undergo multiple criminal background checks, methods to reduce the costs, and expedite the process of conducting criminal background checks. The workgroup shall include representatives from the various departments within the California Health and Human Services Agency, the Department of Justice, the Child Care Resource and Referral Network, and care provider organizations.

§ 1596.8715. Denial or termination of employment for prior conviction; civil liability; insurance liability

If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1596.8897, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

§ 1596.8716. Physical examination as condition of employment; health screening exemption; public school principals

(a) For licensing purposes, employees of a child care and development program operated by a school district, county office of education, or community college under contract with the State Department of Education pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code who have received a physical examination as a condition of employment with the district or office are not required to have a health screening as required by Section 101216 of Title 22 of the California Code of Regulations.

(b) For licensing purposes, a school principal of a public school that operates a child care and development program under contract with the State Department of Education pursuant to Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of the Education Code shall be deemed qualified to be a day care center director pursuant to Section 101315 of Title 22 of the California Code of Regulations only when the program is located on the campus of an operating public school, with staff who are employees of the public school.

§ 1596.872 Renumbered

§ 1596.872a. Child care advocate program; duties; report; implementation

(a) The department may establish a child care advocate program. Each regional office, as well as the central office of the department, may have an advocate who has knowledge of state child care laws, regulations, and programs. The advocate's duties shall include, but not be limited to, all of the following:

(b) Providing information to the general public and parents on child care licensing standards and regulations.

(2) Serving as a liaison to local business, community, law enforcement, labor, and education groups, as well as child care providers and consumers, for the purpose of providing information about licensing standards and regulations.

(3) Disseminating information on the state's licensing role and activities, child care resource and referral agencies, and other child care programs.

(4) Acting as a liaison to child care resource and referral agencies to provide current information on licensing regulations, procedures, violations, revocations, and activities.

(5) Investigating and seeking to resolve complaints and concerns communicated on behalf of children served by a child day care facility. Complaints shall be handled in an objective manner to ascertain the pertinent facts

The ombudsman may refer any complaint to the appropriate state or local government agency.

(b) The advocate shall have access to child day care facilities and shall have the authority to speak with children and staff.

(c) The department shall report to the Legislature and the Governor, on December 31, 1985, and annually thereafter, the number of complaints resolved and referred and any related follow-up activities, and the number of facilities visited pursuant to subdivision (a).

(d) The department shall implement this section during periods that Section 1596.792b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

§ 1596.872b. Child care advocate program; duties; implementation

(a) The department may establish a child care advocate program. This program may have one child care advocate for each licensing district regional office providing child care licensing services. A chief child care advocate shall be responsible for operations of the program and shall report to the chief of the child care licensing branch.

Each child care advocate shall have knowledge of state child care laws, regulations, and programs. The child care advocate's duties shall include, but not be limited to, all of the following:

(1) Providing information to the general public and parents on child care licensing standards and regulations.

(2) Serving as a liaison to local business, community, law enforcement, labor, and education groups, as well as child care providers and consumers, for the purpose of providing information about licensing standards and regulations.

(3) Disseminating information on the state's licensing role and activities, child care resource and referral agencies, and other child care programs.

(4) Acting as a liaison to child care resource and referral agencies to provide current information on licensing regulations, procedures, violations, revocations, and activities.

(5) Evaluating and seeking to resolve complaints and concerns communicated on behalf of children served by a child day care facility. Complaints shall be handled in an objective manner to ascertain the pertinent facts. The child care advocate may refer any complaint to the appropriate state or local government agency.

(6) Seeking to mediate disputes between the department and child care licensees, where licensees allege misapplication of licensing regulations and have exercised any initial appeal rights as specified in Section 1596.842.

(b) The child care advocate shall have access to child day care facilities and shall have the authority to speak with children and staff.

(c) The department may implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

§ 1596.8725 Repealed

§ 1596.873. Advisory committee functions

The advisory committee established pursuant to Section 8286 of the Education Code shall perform all of the following functions with regard to this act:

(a) Assist the department in developing and reviewing guidelines for the administration of this act.

(b) Review the implementation of this act.

(c) Make written recommendations to the Legislature, the Governor, and the department

by December 31, 1985, with regard to possible improvements to facilitate the implementation of this act.

(d) Advise the director regarding regulations, policy, and administrative practices pertaining to the licensing of child day care facilities.

§ 1596.874. Notice to be posted in licensed facility; availability of licensee's copy of regulations

(a) The State Department of Social Services shall furnish each licensed child day care facility with a notice that shall be posted at the facility where it can be easily seen by employees and consumers. The required notice shall contain information which does all of the following:

- (1) Identifies the licensing agency and how licensing regulations may be obtained.
- (2) Gives local telephone numbers where complaints may be made.
- (3) Contains the nonretaliation provision in Section 1596.881.

(b) The licensee of the child day care facility shall make his or her copy of current licensing regulations available to employees and consumers.

§ 1596.875. Duties of department to assure compliance with act

To assure compliance with this act, the department shall:

(a) Conduct ongoing in-service programs for licensing staff in cooperation with other public entities and local associations.

(b) Conduct an annual seminar for representatives of enforcement agencies, including, but not limited to, police officers, district attorneys, and judges.

(c) Work with the Department of Justice to assure that license revocations appear on criminal records.

§ 1596.876. Release of minor to peace officer; provision of address and phone number of parent or guardian

In any case in which a child day care facility releases a minor to a peace officer pursuant to Section 305 of the Welfare and Institutions Code, the official in charge of that facility shall provide the peace officer with the address and telephone number of the minor's parent or guardian in order to enable the peace officer to make the notification required by Section 308 of the Welfare and Institutions Code.

§ 1596.877. Child abuse and neglect complaints; check of records; investigation of reports

(a) Prior to granting a license to, or otherwise approving, any family day care home, the department shall check the child abuse and neglect complaint records of the child protective services agency of the county in which the applicant has resided for the two years preceding the application.

(b) Prior to granting a license to or otherwise approving any individual to care for children in either a family day care home or a day care center, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code. The Department of Justice shall maintain and continually update an index of

reports of child abuse by providers and shall inform the department of subsequent reports received from the child abuse index pursuant to Section 11170 of the Penal Code and the criminal history.

(c) The department shall investigate any reports received from the Child Abuse Registry and investigate any information received from the county child protective services agency. However, child protective services agency information arising from a report designated as "unfounded," as defined pursuant to subdivision (a) of Section 11165.12 of the Penal Code, shall not be included in the investigation. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective services agency that investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry or based on child abuse and neglect complaint records of the county child protective services agency unless child abuse is substantiated.

(d) On and after January 1, 1993, the department shall implement this section for records maintained by counties that have automated their child abuse and neglect complaint records on or before January 1, 1993. On and after July 1, 1993, the department shall implement this section for records maintained by all counties.

§ 1596.878. Establishment, administration and monitoring of program

The department shall establish, administer, and monitor programs which license child day care facilities consistent with the provisions of this act.

§ 1596.879. Denial of application or permit; notice and hearing

Immediately upon the denial of any application for a license or for a special permit, the department shall notify the applicant in writing. Within 15 days after the department mails the notice, the applicant may present his or her written petition for a hearing to the department. Upon receipt by the department of the petition, the petition shall be set for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department has all the powers granted in that chapter.

ARTICLE 3. EMPLOYER DISCRIMINATION REMEDIES

§ 1596.880. "Employee" and "Employer" defined

For the purposes of this article:

(a) "Employee" means employee of a licensee or employee of the agent of a licensee subject to this act.

(b) "Employer" means a licensee or agent of a licensee subject to this act.

§ 1596.881. Employees enforcement of law or refusal to violate law; discharge, demotion, or suspension; prohibition; notification of rights

No employer shall discharge, demote, or suspend, or threaten to discharge, demote, or suspend, or in any manner discriminate against any employee who takes any of the following actions:

(a) Makes any good faith oral or written complaint of the violation of any licensing or

other laws by the employer to the State Department of Social Services or other agency having statutory responsibility for enforcement of the law or to the employer or representative of the employer.

(b) Institutes, or causes to be instituted, any proceeding against the employer in relation to the violation of any licensing or other laws.

(c) Is, or will be, a witness or testify in a proceeding in relation to the violation of any licensing or other laws.

(d) Refuses to perform work in violation of a licensing law or regulation after notifying the employer of the violation.

Employees shall be notified in writing at the time of employment of their rights under this chapter, as evidenced by their signature on a notification form outlining actions protected by this section. Forms to be utilized for this purpose shall be kept on file at the facility. The department shall provide each facility with the notification forms, which shall include information regarding enforcement pursuant to relevant Labor Code sections.

"Other laws" for the purposes of this section, includes, but is not limited to, laws relating to staff-child ratios, transportation of children, or child abuse.

§ 1596.882. Employee enforcement of law or refusal to violate law; disposition of claims

(a) A claim by the employee alleging the violation by the employer of Section 1596.881 shall be presented to the employer within 45 days after the action as to which complaint is made and presented to the Division of Labor Standards Enforcement not later than 90 days after the action as to which complaint is made.

(b) Upon receipt of the complaint, the Division of Labor Standards Enforcement shall cause whatever investigation to be made as it deems appropriate.

(c) If upon investigation the Division of Labor Standards Enforcement determines that the employer has violated Section 1596.881, it shall bring an action in any appropriate court against the employer.

(d) In any such action, the court shall have jurisdiction, for cause shown, to issue restraining orders and order all appropriate relief, including rehiring and reinstatement of the employee of his or her former position with back pay and benefits.

(e) Within 30 days of the receipt of a complaint pursuant to this section, the Division of Labor Standards Enforcement shall review the facts of the employee's complaint and either set a hearing date or notify the employee and the employer of its decision. Where necessary, the Division of Labor Standards Enforcement shall begin the appropriate court action to enforce the decision.

(f) Except for any grievance procedure or arbitration or hearing that is available to the employee pursuant to a collective bargaining agreement, this section is the exclusive means for presenting claims under this article.

§ 1596.883. Refusal to rehire, promote, or restore eligible employee; misdemeanor

Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for the rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

ARTICLE 4. SUSPENSION AND REVOCATION

§ 1596.885. Denial, suspension or revocation of licenses, registration, or special permits; grounds

The department may deny an application for or suspend or revoke any license, registration, or special permit issued under this act upon any of the following grounds and in the manner provided in this act:

(a) Violation by the licensee, registrant, or holder of a special permit of this act or of the rules and regulations promulgated under this act.

(b) Aiding, abetting, or permitting the violating of this act or of the rules and regulations promulgated under this act.

(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state.

(d) The conviction of a licensee, or other person specified in Section 1596.871, at any time before or during licensure, of a crime as defined in Section 1596.871.

(e) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

§ 1596.886. Temporary suspension

The director may temporarily suspend any license, registration, or special permit prior to any hearing when, in the opinion of the director, the action is necessary to protect any child of a child day care facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee, registrant, or holder of the special permit of the temporary suspension and the effective date thereof and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, registrant, or holder of the special permit, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until such time as the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

§ 1596.8865. Death or serious injury due to abuse or willful neglect: notice by local child protective agency; temporary suspension of license; notice to involved persons; service of accusation; hearing; evidence

(a) When a local child protective agency, as defined in Section 11165 of the Penal Code, has a reasonable suspicion, as defined in subdivision (a) of Section 11166 of the Penal Code, that the death or serious injury of a child occurred at a child day care facility because of abuse or willful neglect by the personnel of the child day care facility, the agency shall immediately notify the director.

(b) Within two working days of receipt of the evidence that the death or serious injury occurred at a child day care facility because of abuse or willful neglect by the personnel of the child day care facility, the department shall temporarily suspend the license, registration, or special permit of the facility and shall immediately notify the licensee, registrant, or holder of

the special permit of the temporary suspension and the effective date thereof and at the same time serve the provider with an accusation. The hearing shall be set and conducted in the manner provided in Section 1596.886, and the temporary suspension shall have the same effect and duration as provided in Section 1596.886.

(c) The director shall request that the city police, county sheriff, or other law enforcement agencies and any other county agencies investigating the death or serious injury of the child shall expedite and coordinate evidence gathering in the case and to the extent that providing the evidence will not adversely affect any criminal prosecution, make the evidence available as soon as possible for the purposes of the hearing on the temporary suspension.

(d) As used in this section, "serious injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

§ 1596.8866. Reopening investigations into licensed child day care facilities; receipt of court record indicating judicial determination that injury to child may have been inflicted while in care and custody of day care provider

The State Department of Social Services shall reopen an investigation into a licensed child day care facility when any person provides the department with a certified copy of a court record in which a judicial officer has determined that an injury to a child may have been inflicted while in the care and custody of a day care provider.

§ 1596.8867. Unannounced visit following temporary suspension or revocation of license; verification that facility is nonoperational

(a) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a temporary suspension of a license, in order to ensure that the facility is nonoperational, unless the department has previously verified that the facility is nonoperational.

(b) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a revocation of a license in order to ensure that the facility is nonoperational, unless the department has previously verified that the facility is nonoperational.

§ 1596.887. Proceedings for suspension, revocation, or denial of license, registration, or special permit; law governing standard of proof; hearings; continuances

(a) Proceedings for the suspension, revocation, or denial of a license, registration, or special permit under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by that chapter. In the event of conflict between the provisions of this chapter and those provisions of the Government Code, the provisions of the Government Code shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) If the license is not temporarily suspended pursuant to Section 1596.8865, the

hearing shall be held within 90 days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of one or more of the following:

(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

§ 1596.8871. Hearing; testimony of child or similarly vulnerable witness outside of presence of respondent; condition; closed-circuit television; clearing of hearing room

(a) The administrative law judge conducting a hearing under this article may permit the testimony of a child witness, or a similarly vulnerable witness, including a witness who is developmentally disabled, to be taken outside the presence of the respondent or respondents if all of the following conditions exist:

(1) The administrative law judge determines that taking the witness's testimony outside the presence of the respondent or respondents is necessary to ensure truthful testimony.

(2) The witness is likely to be intimidated by the presence of the respondent or respondents.

(3) The witness is afraid to testify in front of the respondent or respondents.

(b) If the testimony of the witness is taken outside of the presence of the respondent or respondents, the department shall provide for the use of one-way closed-circuit television so the respondent or respondents can observe the testimony of the witness. Nothing in this section shall limit a respondent's right of cross-examination.

(c) The administrative law judge conducting a hearing under this section may clear the hearing room of any persons who are not a party to the action in order to protect any witness

from intimidation or other harm, taking into account the rights of all persons.

§ 1596.8872. Witnesses under age 12; hearsay testimony

(a)(1) An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

(2) The proponent of the statement shall give reasonable notice to all parties of the intended introduction of the statement at the hearing.

(3) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed out-of-court statement and it gives the proponent of the evidence a reasonable period of time to prepare a response to the objection prior to the hearing.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

§ 1596.8875. Witness fees and mileage; payment of expenses

In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

§ 1596.888. Reinstatement

Any license, registration, or special permit suspended pursuant to this chapter, and any special permit revoked pursuant to this chapter, may be reinstated pursuant to Section 11522 of the Government Code.

§ 1596.889. Evidence; standard of proof

In all proceedings conducted in accordance with Section 1596.887, the preponderance of the evidence standard shall apply.

§ 1596.8895. Notice of suspension of license to parent or legal guardian

(a) Whenever the director temporarily suspends the license, registration, or special permit of a child day care facility pursuant to Section 1596.886, the director or the local licensing agency shall send written notification to the parent or legal guardian of each child receiving services in the facility. The department or the local licensing agency, if there is one,

shall also post a written notice of the temporary suspension at the facility in a place readily visible and accessible to the parents or guardians of children receiving services at the facility. Removal of the posted notice while the temporary suspension is in effect is a violation of this chapter punishable by a fine of five hundred dollars (\$ 500).

(b) If a temporary suspension order is not effected within 30 days of the filing of an accusation, the director or the local licensing agency shall send written notification that the accusation has been filed to the parent or legal guardian of each child receiving services in the facility.

(c)(1) Upon receipt of an accusation indicating the department's intent to revoke a facility's license, the licensee shall provide copies of a summary of the accusation to the parent or legal guardian of each child receiving services in the facility until that accusation is either dismissed or resolved through the administrative hearing process or stipulated agreement.

(2) Upon enrollment of a new child in a facility, the licensee shall provide to the parents or legal guardians of the newly enrolling child copies of a summary of any accusation that the licensee has received during the prior 12-month period that indicates the department's intent to revoke the facility's license.

(3) The licensee shall require each recipient of the summary of the accusation to sign a statement indicating that he or she has received the document and the date it was received.

(4) The licensee shall keep verification of receipt in each child's file.

(5) The department shall prepare and provide to the licensee the summary of the accusation.

ARTICLE 4.5. EMPLOYEE ACTIONS

§ 1596.8897. Prohibited positions or employment; grounds; notice; removal; appeal; petition for reinstatement

(a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1596.871.

(4) Engaged in any other conduct that would constitute a basis for disciplining a licensee.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written

appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

(c)(1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person that shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the employee or prospective employee pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section. The department may enter an order prohibiting any person from being a member of the board of directors, the executive director, or an officer of a licensee prohibiting the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1596.885

or 1596.886.

(h)(1)(A) In cases where the excluded person appealed the exclusion order and there is a decision and order upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2)(A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

§ 1596.8898. Grounds for exclusion of certain persons from designated facilities

(a)(1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1598.8897 or any other law.

(e) The department may determine not to exclude a person from, or remove him or her from the position of, a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has been determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances or conditions that either have been corrected or are no longer in existence.

§ 1596.8899. Unannounced visit following order of immediate removal or exclusion

The department shall conduct an unannounced visit to a facility within 30 days after the department serves an order of immediate exclusion from the facility upon the licensee or a person subject to immediate removal or exclusion from the facility pursuant to paragraph (2) of subdivision (c) of Section 1596.871 or subdivision (c) of Section 1596.8897 in order to ensure that the excluded person is not within the facility, unless the department previously has verified that the excluded person is not within the facility.

ARTICLE 5. OFFENSES

§ 1596.89. Actions to enjoin violations

The director may bring an action to enjoin the violation or threatened violation of Section 1596.80 or 1596.805 in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of

Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. Upon a finding by the director that the violation threatens the health or safety of any child in, or served by, a child day care facility, the department or agency contracted with may bring an action to enjoin the violation, threatened violation, or continued violation by any child day care facility which is located in an area for which it is responsible pursuant to the terms of the contract.

With respect to any and all actions brought pursuant to this section alleging actual violation of Section 1596.80 or 1596.805, the court shall, if it finds such allegations to be true, issue its order enjoining the child day care facility from continuance of the violation.

This section applies to family day care homes when the provider has failed to comply with Section 1596.80 or 1596.805 within 30 days of notice by the director of noncompliance, or at any time when a threat to the health and safety of children exists.

§ 1596.890. Violations; punishment

(a) Any person who willfully or repeatedly violates any provision of this chapter, or any rule or regulation promulgated under this chapter is guilty of a misdemeanor. Upon conviction thereof, such a person shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days, or by both the fine and imprisonment. The operation of a child day care facility without a license issued pursuant to this chapter shall make the owner or operator, or both, subject to a summons to appear in court.

(b) Notwithstanding subdivision (a) or any other provision of law, the sole sanction for failure of a resources and referral agency or an alternative payment program to comply with paragraph (2) of subdivision (a) of Section 1596.859 shall be set forth in the "Funding Terms and Conditions" agreement between the affected agency or program and the State Department of Education.

§ 1596.891. Violation of Section § 1596.80; civil penalties for refusal to seek licensure or operation after denial of licensure; appeal; exemption

(a) A person who violates Section 1596.80 may be liable for an immediate assessment of civil penalties in the amount of two hundred dollars (\$ 200) per day.

(b) The penalty specified in subdivision (a) shall be imposed if the operator of an unlicensed facility refuses to seek licensure or the operator seeks licensure and is denied but continues to operate, unless other remedies available to the department, including criminal prosecution, are deemed more effective by the department.

(c) The operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeals procedure.

(d) The operator shall be exempt from the civil penalty specified in subdivision (a) if a lack of liability insurance is the sole reason for nonlicensure and the reason for operating without liability insurance is not due to any fault on the part of the operator.

§ 1596.8915. Informing facility of unannounced site visit; misdemeanor

Any person who, without lawful authorization from a duly authorized officer, employee,

or agent of the department, informs an owner, operator, employee, or agent of a child day care facility of an impending and unannounced site visit to that facility by personnel of the department, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$ 1,000), by imprisonment in the county jail for a period not to exceed 180 days, or by both a fine and imprisonment.

§ 1596.892. Civil, criminal, and administrative remedies under this article not exclusive

The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive, and may be sought and employed in any combination deemed advisable by the department to enforce the provisions of this chapter.

§ 1596.893. Renumbered

§ 1596.893a. Citations to violating facilities; penalties; review; implementation

(a) When the licensing agency has reason to believe that an unlicensed day care facility is operating or that a day care facility is in violation of the California Child Day Care Facilities Act or of the rules and regulations promulgated under the California Child Day Care Facilities Act, the agency may issue a citation to the facility. Each citation shall be in writing and shall describe with particularity the nature of the violation and the action proposed by the licensing agency. If the citation has been developed pursuant to an evaluator visit, the citation shall include the plan developed by the operator and evaluator to correct each deficiency. The citation shall be served upon the facility operator personally or through registered mail.

(b) The licensing agency shall give due consideration to the appropriateness of the penalty to the alleged violation, considering each of the following factors:

- (1) The gravity of the violation.
- (2) The history of previous violations.
- (3) The possibility of a threat to the health or safety of any child in the facility.
- (4) The number of children affected by the violation.
- (5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) If the facility desires to contest a citation or the proposed assessment of a civil penalty, the facility shall, within 10 business days after service of the citation, notify the licensing agency in writing of a request for an informal conference. The licensing agency shall hold, within 30 days from the receipt of the request, an informal conference. At the conclusion of the conference, the licensing agency may affirm, modify, or dismiss the citation or proposed penalty. The agency shall state in writing the reasons for any action taken in the informal conference.

(d) If the penalty contained in the citation is affirmed in the informal conference, the licensing agency shall pursue enforcement of the penalty, and the facility may pursue any appeal mechanisms otherwise contained in law.

(e) The department shall implement this section during periods that Section 1596.893b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

§ 1596.893b. Citations to violating facilities; penalties; regulations; implementations

(a) When the licensing agency has reason to believe that an unlicensed day care facility is operating or that a day care facility is in violation of the California Child Day Care Facilities Act or of the rules and regulations promulgated under the California Child Day Care Facilities Act, the agency may issue a citation to, or impose penalties on, the facility. Each citation shall be in writing and shall describe with particularity the nature of the violation and the action proposed by the licensing agency. If the citation has been developed pursuant to an evaluator visit, the citation shall include the plan developed by the operator and evaluator to correct each deficiency. The citation shall be served upon the facility operator personally or through registered mail. Citations and penalties of licensed child care facilities shall be applied for the sole purpose of ensuring compliance with established statutes or regulations. The department shall distinguish between all of the following:

(1) Violations that present an immediate risk to the health, safety, or personal rights of the children in care.

(2) Violations that have the potential of becoming an immediate risk to the health, safety, or personal rights of the children in care.

(3) Violations that do not present an immediate or potential risk to the health, safety, or personal rights of the children in care.

(b) Civil penalties shall be imposed in accordance with Sections 1596.99 and 1597.62 only after the day care licensee fails to correct the violation in the time period specified in the plan developed pursuant to Section 1596.98 or 1597.56 and the evaluator makes a finding that the violation presents risks identified in paragraph (1) or (2) of subdivision (a). Civil penalties shall begin to accrue on the day the evaluator revisits the site and verifies that the violation was not corrected, even if the evaluator's visit is after the time period specified in the plan.

(c) The department shall adopt regulations establishing procedures for the imposition of citations or civil penalties under this section.

(d) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

§ 1596.894. Abatement of action against unlicensed facility; ownership change

Any action brought by the department against an unlicensed child day care facility shall not abate by reason of sale or other transfer of ownership of the child day care facility which is a party to the action except with the written consent of the licensing agency.

§ 1596.895. Notification of priority one violations; implementation

(a) The department shall notify resource and referral agencies funded pursuant to Section 8210 of the Education Code of any priority one violation or any allegation of a priority one violation affecting the health and safety of children that is within the geographic area served by the agency. Resource and referral agencies shall use this information when deciding whether to make a referral to the licensee and shall maintain the confidentiality of information provided to them pursuant to this section.

(b) The Child Care Regulation Section shall notify these resource and referral agencies of the department's actions regarding these allegations of priority one violations within 30 days. The Child Care Regulation Section shall notify these resource and referral agencies of the department's actions regarding these allegations of priority one violations within 10 days after

the allegations have been substantiated by the department.

(c) "Priority one violation" is defined to include sexual assault, physical abuse, ritualistic abuse, or suspicious deaths, if any of the following apply:

(1) The victim is a child in care and the suspect is the facility operator, the licensee, an employee of the facility, or is yet to be identified as any of the individuals specified in this paragraph.

(2) The facility is operating and the suspect has access to the victim or potential victim.

(3) The complaint is against an unlicensed facility and either a temporary suspension order is in effect or the license has been revoked.

(d) "Allegation of a priority one violation" is defined to include any complaints of priority one violations pursuant to subdivision (c).

(e) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

CHAPTER 3.5. DAY CARE CENTERS

ARTICLE 1. GENERAL PROVISIONS

§ 1596.90. Licensure of day care centers; law applicable

No day care center for children shall be licensed under Chapter 3 (commencing with Section 1500), but shall be subject to licensure exclusively in accordance with this chapter and Chapter 3.4 (commencing with Section 1596.70).

ARTICLE 2. LICENSURE REQUIREMENTS

§ 1596.95. Application; form; contents

Any person desiring issuance of a license for a day care center or a special permit for specialized services in a day care center under this chapter shall file with the department pursuant to regulations, an application on forms furnished by the department, which shall include, but not be limited to, all of the following:

(a) Evidence satisfactory to the department of the ability of the applicant to comply with this act and rules and regulations adopted pursuant to this act by the department.

(b) Evidence satisfactory to the department that the applicant is a reputable and responsible character. This evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, evidence of reputable and responsible character shall be submitted as to the members or shareholders thereof, and the person in charge of the day care center for which application for issuance of license or special permit is made.

(c) Evidence satisfactory to the department that the applicant has sufficient financial resources to maintain the standards of service required by regulations adopted pursuant to this act. The information shall be required only upon initial application for licensure, and when requested by the department, in writing, explaining the need for the evidence as part of the department's investigative function.

(d) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer, or director of, or as a person who has held or holds a beneficial

ownership of 10 percent or more in any child day care facility or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200), 2 (commencing with Section 1250), or 3 (commencing with Section 1500).

(e) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (d).

(f) Evidence satisfactory to the department that there is a fire escape and disaster plan for the facility and that fire drills and disaster drills will be conducted at least once every six months. The documentation of these drills shall be maintained at the facility on a form prepared by the department and shall include the date and time of the drills.

(g) Evidence satisfactory to the department that the applicant has posted signs at the point of entry to the facility that provide the telephone number of the local health department and state all of the following:

(1) Protect your child -- it is the law.

(2) All the information specified in Sections 27360 and 27360.5 of the Vehicle Code regarding child passenger restraint systems.

(3) Call your local health department for more information.

(h) Any other information as may be required by the department for the proper administration and enforcement of this act.

(i) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

§ 1596.952. Corporate applicant; directors or officers; related facilities; license issuance or revocation

(a) A corporation that applies for licensure with the department shall list the facilities that any member of the board of directors, the executive director, or an officer that has been licensed to operate, been employed in or served as a member of the board of directors, the executive director, or an officer.

(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1596.851 and 1596.8898.

(c) The department may revoke the license of any corporate licensee that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1596.851 and 1596.8898.

(d) Prior to instituting an administrative action pursuant to subdivision (b) or (c), the department shall notify the applicant or licensee of the person's ineligibility to be a member of the board of directors, an executive director, or an officer of the applicant or licensee. The licensee has 15 days to remove the person from that position if the person does not have client contact, or immediately upon notification if the person has client contact.

§ 1596.955. Child day care centers serving preschool age children; optional program; departmental guidelines and regulations

(a) The department shall develop guidelines and procedures to permit licensed child day care centers serving preschool age children to create a special program component for

children between the ages of 18 months and 30 months. This optional toddler program shall be subject to the following basic conditions:

- (1) An amended application is submitted to and approved by the department.
- (2) No child shall be placed in the preschool program before the age of 30 months without parental permission. A child who is more than 30 months of age may participate in the toddler program with parental permission.
- (3) Parents give permission for the placement of their children in the toddler program.
- (4) A ratio of six children to each teacher is maintained for all children in attendance at the toddler program. An aide who is participating in on-the-job training may be substituted for a teacher when directly supervised by a fully qualified teacher.
- (5) The maximum group size, with two teachers, or one fully qualified teacher and one aide, does not exceed 12 toddlers.
- (6) The toddler program is conducted in areas separate from those used by older or younger children. Plans to alternate use of outdoor play space may be approved to achieve separation.
- (7) All other preschool regulations are complied with.
- (b) The toddler program shall be considered an extension of the preschool license, without the need for a separate license.
- (c) The department shall immediately prepare proposed regulations for public hearing which would consider the foregoing basic conditions as well as any additional health and safety safeguards deemed necessary for this age group.
- (d) The guidelines in subdivision (a) shall remain in force and effect only until regulations implementing this section are adopted by the department.

§ 1596.956. Child day care centers serving infants; optional toddler program; departmental guidelines and regulations

(a) The department shall develop guidelines and procedures to authorize licensed child day care centers serving infants to create a special program component for children between the ages of 18 months and 30 months. The optional toddler program shall be subject to the following basic conditions.

- (1) An amended application shall be submitted to and approved by the department.
- (2) No child under the age of 18 months shall be moved into the toddler program. A child who is more than 18 months of age shall not be required to be in the toddler program.
- (3) Parents shall give permission for the placement of their children in the toddler program.
- (4) A ratio of six children to each teacher shall be maintained for all children in attendance at the toddler program. An aide who is participating in on-the-job-training may be substituted for a teacher when directly supervised by a fully qualified teacher.
- (5) The maximum group size, with two teachers, or one fully qualified teacher and one aide, shall not exceed 12 toddlers.
- (6) The toddler program shall be conducted in areas separate from those used by older or younger children. Plans to alternate use of outdoor play space may be approved to achieve separation.
- (7) All other infant center regulations shall be complied with.
- (b) The toddler program shall be considered an extension of the infant center license, without the need for a separate license.
- (c) The department shall immediately prepare proposed regulations for public hearing

that would consider the foregoing basic conditions as well as any additional health and safety safeguards deemed necessary for this age group.

(d) The guidelines in subdivision (a) shall remain in force and effect only until regulations implementing this section are adopted by the department.

§ 1596.96. Organization possessing current valid license to operate facility at another site; review of application and determination, time limit; provisional license; development of expedited procedures; appeal procedure

(a) The department and the licensing agencies with which it contracts for licensing shall review and make a final determination within 60 days of an applicant's submission of a complete application on all applications for a license to operate a day care facility for children by an organization which possesses a current valid license to operate a day care facility for children at another site. Applicants shall note on the application, or in a cover letter to the application, that they possess a current valid license at another site, and the number of that license.

(b) The department shall request a fire safety clearance from the appropriate fire marshal within five days of receipt of an application described in subdivision (a). The department shall request criminal records clearance within five days of receipt of an application described in subdivision (a), unless the clearance requirement has been otherwise satisfied by transfer of clearance under subdivision (g) of Section 1596.871.

(c) If the department for any reason is unable to comply with subdivision (a), it shall, within 60 days of receipt of the application described in subdivision (a), grant a provisional license to the applicant to operate for a period not to exceed six months. While the provisional license is in effect, the department shall continue its investigation and make a final determination on the application before the provisional license expires. The provisional license shall be granted, provided the department knows of no life safety risks, the criminal records clearances, if applicable, are complete, and the fire safety clearance is complete. The director may extend the term of a provisional license for an additional six months at the time of the application, if the director determines that more than six months will be required to achieve full compliance with licensing standards due to circumstances beyond the control of the applicant, and if all other requirements for a license have been met.

(d) If the department does not issue a provisional license pursuant to subdivision (c), the department shall issue a notice to the applicant identifying whether the provisional license has not been issued due to the existence of a life safety risk, lack of a fire safety clearance, lack of a criminal records clearance, failure to complete the application, or any combination of these reasons. If a life safety risk is identified, the risk preventing the issuance of a provisional license shall be clearly explained. If a lack of the fire safety clearance or lack of criminal records clearance is identified, the notice shall include the dates on which the department requested the clearance and the current status of those requests, the fire marshal's name and telephone number to whom a fire safety clearance request was sent, and the names of individuals for whom criminal records clearances are lacking. If failure to complete the application is identified, the notice shall list all of the forms or attachments which are missing or incorrect. This notice shall be sent to the applicant no later than 60 days after the applicant filed the application. If the reasons identified in the notice are corrected, the department shall issue the provisional license within five days after the corrections are made.

(e) The department shall, immediately after January 1, 1992, develop expedited procedures necessary to implement subdivisions (a), (b), (c), and (d).

(f) The department shall, immediately after January 1, 1992, develop an appeal procedure for applicants under this section for both denial of licenses and delay in processing applications.

§ 1596.97. Issuance of license or special permit

A license or special permit for a day care center for children may be issued providing the licensee has been found not to be in violation of any statutory requirements or rules or regulations pursuant to this chapter and Chapter 3.4 (commencing with Section 1596.70).

§ 1596.98. Noncompliance; notice; civil penalties; plan of correction; regulations

(a) The department shall notify the day care center in writing of all deficiencies in its compliance with this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the center. Upon a finding of noncompliance, the department may levy a civil penalty which shall be paid to the department each day until the department finds the center in compliance.

(b) In developing a plan of correction both the licensee and the department shall give due consideration to the following factors:

- (1) The gravity of the violation.
- (2) The history of previous violations.
- (3) The possibility of a threat to the health or safety of any child in the facility.
- (4) The number of children affected by the violation.
- (5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) The department shall ensure that the licensee's plan of correction is verifiable and measurable. The plan of correction shall specify what evidence is acceptable to establish that a deficiency has been corrected. This evidence shall be included in the department's facility file.

(d) The department shall adopt regulation establishing procedures for the imposition of civil penalties under this section.

§ 1596.99. Levy of civil penalty in addition to suspension, temporary suspension, or revocation; amounts

(a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter or Chapter 3.4 (commencing with Section 4596.70, the department may levy a civil penalty.

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$ 25) nor more than fifty dollars (\$ 50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event shall a civil penalty assessment exceed one hundred fifty dollars (\$ 150) per day per violation.

(c) Notwithstanding Sections 1596.893a, 1596.893b, 1596.98, the department shall assess an immediate civil penalty of one hundred fifty (\$ 150) per day per violation for any of the following serious violations:

(1) Fire clearance violations, including, but not limited to, overcapacity, inoperable smoke alarms, and inoperable fire alarm systems.

(2) Absence of supervision, including, but not limited to, a child left unattended, supervision of a child by a person under 18 years of age, and lack of supervision resulting in a child wandering away.

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

(5) Refused entry to a facility or any part of a facility in violation of Section 1596.852, 1596.853, or 1597.09.

(6) The presence of an excluded person on the premises.

(d) Notwithstanding Sections 1596.893a, 1596.893b, and 1596.98, any day care center that is cited for repeating the same violation of this chapter or Chapter 3.4 (commencing with Section 1596.70), within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

(e) Any day care center that is assessed a civil penalty under subdivision (d) and that repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) shall be assessed an immediate civil penalty of one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

(f) Notwithstanding any other provision of law, revenues received by the state from the payment of civil penalties imposed on licensed child care centers pursuant to this chapter or Chapter 3.4 (commencing with Section 1596.70), shall be deposited in the Child Health and Safety Fund, created pursuant to Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code, and shall be expended, upon appropriation by the Legislature, pursuant to subdivision (f) of Section 18285 of the Welfare and Institutions Code exclusively for the technical assistance, orientation, training, and education of licensed day care center providers.

ARTICLE 3. ADMINISTRATION

§ 1597.01. Repealed

§ 1597.05. Licensing reviews; health and safety consideration; completion of records; verification

(a) Licensing reviews of a child day care center shall be limited to health and safety considerations and shall not include any reviews of the content of any educational or training program of the facility.

(b) A licensee shall have 30 days after the employment of a staff person or enrollment of a child to secure records requiring information from sources not in the control of the licensee, staff person, or child. An extension can be granted where the licensee can demonstrate that further delays are beyond the control of the licensee. No additional onsite inspections for the purpose of checking completion of the designated records shall be made during the 30-day period.

"Records," for the purposes of this subdivision, mean those types of records requiring information from sources not in the control of the facilities, and include, but are not limited to, all of the following:

(1) Physical examination reports by physicians and surgeons.

(2) Confirmation of required immunizations.

(3) Submission of official data describing the educational qualifications of the facility

staff.

(c) Within 90 days of employing a facility director, a licensee shall secure verification that the facility director has completed an orientation given by the department and shall maintain a copy of that verification.

§ 1597.055. Day care center teachers; qualifications

(a) Notwithstanding any other educational requirements, a person may be hired as teacher in a day care center if he or she satisfies all of the following conditions:

(1) Is 18 years of age or older.

(2) Possesses a regional occupation program certificate of training in child care occupations issued by a regional occupational program which is accredited by the Western Association of Schools and Colleges.

(3) Has completed at least 95 hours of classroom instruction in child care and development and child care occupations and at least 150 hours in supervised field experience in a licensed day care center or comparable group child care program.

(b) Subsequent to being hired pursuant to subdivision (a), a teacher shall make satisfactory progress towards meeting the educational requirement for a fully qualified teacher, as specified in departmental regulations. For purposes of this section, "satisfactory progress" shall mean completion, with passing grades, of a minimum of two units each semester or the equivalent number of units each quarter until the educational requirement is satisfied. Six of the required semester or equivalent number of quarter units of early childhood education from an accredited university or college shall be completed during the next two consecutive regular semesters or equivalent quarters.

(c) A teacher hired pursuant to this section shall not be exempt from satisfying any other noneducation requirements imposed by law on teachers in day care centers and shall have on-site supervision by a fully qualified teacher until six of the units specified in subdivision (b) are completed.

§ 1597.056. Extended day care; teacher qualifications

Notwithstanding any other educational requirements, a person may be hired to provide extended day care for children of a given grade level in a day care center if the person is otherwise qualified to be hired by a school district to teach children of that grade level.

§ 1597.057. Child development associate credentials; qualifications; standards

Any requirement established by the department, pursuant to Article 1 (commencing with Section 1596.70) of Chapter 3.4, that coursework in early childhood education or child development, or both, be completed in order to fully qualify as a day care center teacher, may be satisfied with a valid child development associate credential issued by the Child Development Associate National Credentialing Program for a center-based setting with a preschool age level or infant/toddler age level endorsement. The preschool age level endorsement shall qualify the holder of the credential as a day care center teacher for ages three to five, inclusive, and the infant/toddler age level endorsement shall qualify the holder of the credential as a day care center teacher for up to, and including, age two.

The child development associate credential used to qualify individuals as day care center teachers shall involve standards that are no less stringent than those in effect on

January 1, 1988.

§ 1597.059. Aide to child care teachers; qualifications

(a) The State Department of Social Services shall adopt guidelines and procedures to permit an aide to assist a fully qualified child care teacher in the supervision of up to 18 preschool age children, with the requirement that the aide shall complete at least two accredited postsecondary semester units or equivalent quarter units of early childhood education or child development per semester or quarter, commencing with the first semester or quarter following initial employment and continuing until six units have been completed.

(b) For purposes of this section, "preschool age children" means children who are enrolled in a child day care center licensed by the department and who are not enrolled in either an infant care center or a schoolage child day care center, as these terms are defined in Title 22 of the California Code of Regulations.

(c) This section shall not become operative prior to June 30, 1993.

§ 1597.06. Repealed by Stats.1990, c 1455 (S.B.2374) § 20

§ 1597.07. Written policy statements, submission to department and parents of children; list of parents served by the facility

The department shall require of every licensee a written policy statement which shall include names and qualifications of all current employees, admission policies, program philosophy, the location and telephone number of the nearest local office responsible for child day care licensing, disciplinary practices, and the licensee's policy and practice regarding preventive health and care of children with non-life-endangering illnesses. The facility shall retain an affidavit signed by the parent or guardian of every child in the facility indicating he or she has read this statement. The licensee shall also provide to all parents, at the consent of the parents involved, a list of parents of children served by the facility.

§ 1597.08. Unannounced site visits

All site visits shall be unannounced.

§ 1597.09. Unannounced visits; frequency

(a) Each licensed child day care center shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(b) The department shall conduct an annual unannounced visit to a licensed child day care center under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

(3) When an accusation against a licensee is pending.

(4) In order to verify that a person who has been ordered out of a child day care center by the department is no longer at the facility.

(c)(1) The department shall conduct an annual unannounced visit to no less than 10

percent of facilities not subject to an evaluation under subdivision (b). These unannounced visits shall be conducted based on a random sampling methodology developed by the department.

(2) If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by 10 percent of facilities not subject to an evaluation under subdivision (b). The department may request additional resources to increase the random sample by 10 percent.

(d) Under no circumstances shall the department visit a licensed child day care center less often than once every five years.

§ 1597.091. Unannounced spot visits; implementation

(a) In addition to the visits required by Section 1597.09, the department shall annually make unannounced spot visits to 20 percent of all child day care centers licensed under this chapter, except schoolage child day care centers. The unannounced visits may be made at any time during the facility's business hours. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint as required by Section 1596.853.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

§ 1597.11. Notice to department of education of violations endangering health or safety of children; time for notice

The department shall notify the State Department of Education when a child care or development facility licensed pursuant to this chapter is found to have licensing violations which the department has determined, by regulation, to endanger the health and safety of the children receiving care. This notification shall be made no later than 15 days after the finding of the violation or violations.

§ 1597.13. License application; processing time

The department and any local agency with which it contracts for the licensing of day care centers shall grant or deny an application for license within 30 days after receipt of all appropriate licensing application materials, as determined by the department, after a site visit has been completed and the facility has been found to be in compliance with licensing standards. The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials.

§ 1597.14. Sale of licensed child day care center resulting in issuance of new license; conditions

(a) Notwithstanding Section 1596.858, in the event of a sale of a licensed child day care center where the sale will result in a new license being issued, the sale and transfer of property and business shall be subject to both of the following:

(1) The licensee shall provide written notice to the department and to the child's parent or his or her legal guardian of the licensee's intent to sell the child day care center at least 30

days prior to the transfer of the property or business, or at the time that a bona fide offer is made, whichever period is longer.

(2) The licensee shall, prior to entering into an admission agreement, inform the child's parent or his or her legal guardian, admitted to the facility after notification to the department, of the licensee's intent to sell the property or business.

(b) Except as provided in subdivision (e), the property and business shall not be transferred until the buyer qualifies for a license or provisional license pursuant to this chapter.

(1) The seller shall notify, in writing, a prospective buyer of the necessity to obtain a license, as required by this chapter, if the buyer's intent is to continue operating the facility as a child day care center. The seller shall send a copy of this written notice to the licensing agency.

(2) The prospective buyer shall submit an application for a license, as specified in Section 1596.95, within five days of the acceptance of the offer by the seller.

(c) No transfer of the facility shall be permitted until 30 days have elapsed from the date when notice has been provided to the department pursuant to paragraph (1) of subdivision (a).

(d) The department shall give priority to applications for licensure that are submitted pursuant to this section in order to ensure timely transfer of the property and business. The department shall make a decision within 60 days after a complete application is submitted on whether to issue a license pursuant to Section 1596.95.

(e) If the parties involved in the transfer of the property and business fully comply with this section, then the transfer may be completed and the buyer shall not be considered to be operating an unlicensed facility while the department makes a final determination on the application for licensure.

§ 1597.15. Gastric tube feedings; medication administered through nebulizers; pilot project; authorization; precautions; evaluation; funding

(a) The director shall authorize the University of California to conduct a pilot project, pursuant to this section, for a period not to extend 24 months beyond the date that funding is available for expenditure for the pilot project. The purpose of the pilot project is to test the feasibility of permitting family day care home providers and child day care center staff to undertake gastric tube feeding or the administration of medication through nebulizers under the conditions and with the precautions specified in subdivision (c).

(b) Notwithstanding any other provision of law, upon authorization from the director pursuant to subdivision (a), child day care center and family day care home licensees and staff selected by the principal investigator of the pilot project, to be known as the Access Project, or his or her staff shall be authorized to undertake gastrostomy tube feeding or the administration of medication through nebulizers on children enrolled in their facilities.

(c) For the purposes of the pilot project, the following precautions shall be taken:

(1) The principal investigator selected by the University of California shall be someone who is licensed to practice medicine in the state and is experienced in supervising programs in which nonmedical personnel perform minor health procedures.

(2) The availability of, and interaction with, experienced nurses with appropriate experience as determined by the principal investigator shall be part of the study design.

(3) Only children with explicit and signed permission by their personal physicians shall be included in the pilot project.

(d) The University of California shall notify the department of any family day care provider or child day care center staff selected to participate in the training and procedures

described in subdivision (b) prior to undertaking these procedures.

(e) Eighteen months after the date funding for the proposed pilot became available for expenditure, the principal investigator of the Access Project shall submit an evaluation of the project to the Assembly Human Services Committee and the Senate Health and Human Services Committee of the Legislature. In preparing the evaluation, the Access Project shall consult with representatives from the State Department of Health Services, the department, family day care associations, family resource centers and networks, child care center provider community and child care resource and referral agencies. The principal investigator of the Access Project shall consult with the department to determine the additional data necessary for the department to make use of the evaluation. The evaluation shall include, but not be limited to, all of the following:

(1) The number of family day care home providers who participated in the project, with information of which procedure the provider was trained in and his or her licensed capacity and actual enrollment.

(2) The number of child day care center staff who participated in the project, with information on which procedure the staff was trained in, the licensed capacity and actual enrollment of the program and the number of staff overall.

(3) The number of children who were able to be served in licensed child care programs with trained family day care home providers or child day care center staff.

(4) Overall impressions, problems encountered, and satisfaction with the pilot project by providers and staff.

(5) Overall impressions, problems encountered, and satisfaction with the pilot project by parents and children.

(6) Overall impressions, problems encountered, and satisfaction with the pilot project by licensing staff.

(7) Overall impressions, problems encountered, and satisfaction with the pilot project by those providing the training, backup and monitoring, of a nonlicensing nature.

(8) Input from providers, staff, trainers, parents, and children as appropriate about the effectiveness of the pilot project.

(9) An assessment of the adequacy of the training, that includes curriculum and core competencies for the health care procedures taught; teaching methods used in the project; and the quality of health care procedures provided, including errors and incidents.

(10) The impact on health and safety from engaging in these procedures on the child needing the procedure and the other children and staff in the program, where measurable.

(11) The impact of the pilot project on increasing the ability of child care programs to serve children with special health needs.

(12) The number of nurse visits required for initial placement in the child care setting.

(13) The need for a nurse with appropriate experience as determined by the principal investigator after placement is arranged and initiated as an adjunct to support each child's own physician or physicians.

(14) The cost of providing the training and services.

(15) Recommendations as to whether the pilot project should be expanded to enable family day care home providers and child day care center staff throughout the state to undertake these procedures and under what specific conditions, with accompanying rationales.

(16) Recommendations for other possible procedures to be authorized in a pilot project with the reasons for those recommendations.

(17) The cost of the care provided in the project, the likely cost of the care if performed by the child day care licensees or staff pursuant to the project, and the cost for provision of that

care by the child's current providers thereof, specifically including the cost of nursing services.

(18) The number of Medi-Cal recipients participating in the project.

(f) No provision of this section shall apply to the Regents of the University of California unless the Regents, by appropriate resolution, make it applicable. It is the intent of the Legislature that the project shall be funded from non-General Fund resources.

(g) This section shall remain in effect only until two years from the date funding is available for expenditure for the pilot project established pursuant to this section and as of that date shall be repealed, unless a later enacted statute, which is chaptered before that date deletes or extends that date. The director shall notify the Chief Clerk of the Assembly in writing of the date this section is repealed and the Chief Clerk shall publish the notification in the Assembly Journal.

§ 1597.20. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) There is a critical need to increase opportunities for children to engage in positive activities during after school hours.

(b) There is a need for staff with the capacity to make after school programs interesting and relevant for schoolage children.

(c) California's juvenile incarceration rate is twice the national average and has increased 65 percent since 1975.

(d) Twice as many California young people were victims of homicide in 1990 than in 1974.

(e) Compared to 1960, American children spend an average of 10 to 12 fewer hours per week with their parents.

§ 1597.21. Schoolage day care centers; licensure and employee qualifications; alternative education and experience requirements

The following requirements shall apply to schoolage day care centers:

(a) The State Department of Social Services shall permit the substitution of 20 training hours for each required unit of education.

(b) In addition to an administration course consisting of three units or 60 training hours and three units or 60 training hours in early childhood education, child development, or schoolage child courses, the site director may, as an alternative to existing regulations, complete nine core units or 180 training hours from the following:

(1) Recreation, which includes, but is not limited to, art, music, and dance.

(2) Physical education, which includes, but is not limited to, indoor and outdoor sports activities.

(3) Human services and social welfare, which includes, but is not limited to, nursing, psychology, sociology, or home economics.

(4) Units earned toward an elementary or middle school teaching credential.

(5) Early childhood education, child development, or schoolage child units.

A director is required to complete 12 units or 240 training hours prior to employment. The remaining three units must be completed within one year of employment.

(c) The State Department of Social Services shall expand the list of college degrees that satisfy current site director educational requirements to include degrees in recreation, physical education, human services, and social welfare, as described in paragraph (3) of subdivision

(b), and education, as described in paragraphs (2) and (4) of subdivision (b).

(d) As an alternative to satisfying the educational requirements of teachers contained in the regulations, a teacher may substitute 12 units or 240 training hours in any combination of the following:

(1) Recreation, which includes, but is not limited to, art, music, and dance.

(2) Physical education, which includes, but is not limited to, indoor and outdoor sports activities.

(3) Human services and social welfare, which includes, but is not limited to, nursing, psychology, sociology, or home economics.

(4) Units earned toward an elementary or middle school teaching credential.

(5) Early childhood education, child development, or schoolage child units. A teacher is required to complete six units or 120 training hours prior to employment.

(e) The department shall accept the following alternative types of experience for site directors and teachers, if the experience was obtained working directly with children: classroom teaching or teacher assisting experience in elementary or middle school education; paid or volunteer work experience in physical education or recreation programs; college work-study or internship in recreation or youth development; paid or volunteer work experience in human services as described in paragraph (3) of subdivision (b); or paid or volunteer work experience in school guidance or in other counseling programs.

(f) In addition to existing approved sources of education, the following are approved sources of education that may be used to satisfy the education required of staff at a schoolage child care center:

(1) Vocational school training in recreation, physical education, human services, social welfare, and education as described in subdivisions (b) and (d).

(2) Professional training that qualifies as continuing education credits in the child care or elementary education area.

(3) Standard training programs that are provided by statewide or nationally recognized or community-based youth service organizations and offered or approved by an accredited educational institution or the Commission on Teacher Credentialing.

(g) Upon the receipt of a completed application for a license to operate a schoolage day care program at a functioning school site from an organization that is currently licensed to operate a schoolage day care program at another site, the department shall have 30 days to make a final determination on whether to issue a license to operate the program. A functioning school site shall meet the requirements of paragraphs (1) and (2) of subdivision (a) of Section 1596.806.

(h)(1) If the department, for any reason, is unable to comply with subdivision (g), it shall, within 30 days of the receipt of the application described in subdivision (g), grant a provisional license to the applicant to operate for a period not to exceed six months. The provisional license shall be granted provided the department has conducted a site visit and has not found any life safety risks, the criminal records clearances are complete, and the school fire inspection has been verified. The requirement for criminal records clearances may be satisfied by transfer of current criminal records clearances, pursuant to subdivision (g) of Section 1596.871. For purposes of a schoolage day care program operating on a functioning school site, the school fire inspection shall be accepted as sufficient fire clearance.

(2) While a provisional license is in effect, the department shall continue its investigation and shall make a final determination on the application prior to the expiration of the provisional license. If the department does not issue a provisional license pursuant to paragraph (1), the department shall follow the procedures for notifying applicants as set forth in subdivision (d) of

CHAPTER 3.6. FAMILY DAY CARE HOMES

§ 1597.30. Legislative findings and declarations

The Legislature finds and declares:

(a) It has a responsibility to ensure the health and safety of children in family homes that provide day care.

(b) That there are insufficient numbers of regulated family day care homes in California.

(c) There will be a growing need for child day care facilities due to the increase in working parents.

(d) Many parents prefer child day care located in their neighborhoods in family homes.

(e) There should be a variety of child care settings, including regulated family day care homes, as suitable alternatives for parents.

(f) That the program to be operated by the state should be cost effective, streamlined, and simple to administer in order to ensure adequate care for children placed in family day care homes, while not placing undue burdens on the providers.

(g) That the state should maintain an efficient program of regulating family day care homes that ensures the provision of adequate protection, supervision, and guidance to children in their homes.

§ 1597.35. Repealed

§ 1597.36. Loan guarantee application request; need for repairs, renovations, or additions; documentation

The department shall provide written documentation to providers of the need for repairs, renovations, or additions when requested for an application for a loan guarantee pursuant to subdivision (d) of Section 8277.6 of the Education Code whenever the repairs, renovations, or additions are required by the department in order for the licensee to maintain or obtain a license for more than six children.

§ 1597.40. Public policy to provide home environment; restriction governing real property

(a) It is the intent of the Legislature that family day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development. It is the public policy of this state to provide children in a family day care home the same home environment as provided in a traditional home setting.

The Legislature declares this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal zoning, building and fire codes and regulations governing the use or occupancy of family day care homes for children, except as specifically provided for in this chapter, and to prohibit any restrictions relating to the use of single-family residences for family day care homes for children except as provided by this chapter.

(b) Every provision in a written instrument entered into relating to real property which

purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family day care home for children, is void and every restriction or prohibition in any such written instrument as to the use or occupancy of the property as a family day care home for children is void.

(c) Except as provided in subdivision (d), every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.

(d)(1) A prospective family day care home provider, who resides in a rental property, shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family day care home.

(2) For family day care home providers who have relocated an existing licensed family day care home program to a rental property on or after January 1, 1997, less than 30 days' written notice may be provided in cases where the department approves the operation of the new location of the family day care home in less than 30 days, or the home is licensed in less than 30 days, in order that service to the children served in the former location not be interrupted.

(3) A family day care home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.

(4) Notwithstanding any other provision of law, upon commencement of, or knowledge of, the operation of a family day care home on his or her property, the landlord or property owner may require the family day care home provider to pay an increased security deposit for operation of the family day care home. The increase in deposit may be required notwithstanding that a lesser amount is required of tenants who do not operate family day care homes. In no event, however, shall the total security deposit charged exceed the maximum allowable under existing law.

(5) Section 1596.890 shall not apply to this subdivision.

§ 1597.43. Legislative findings and declarations; congregate care facilities distinguished

The Legislature finds and declares all of the following:

(a) Family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses. Family day care homes draw clients and vehicles to their sites during a limited time of day and do not require the attendance of a large number of employees and equipment.

(b) The uses of congregate care facilities are distinguishable from the uses of family day care homes operated under the standards of state law. For purposes of this section, a "congregate care facility" means a "residential facility," as defined in paragraph (1) of subdivision (a) of Section 1502. Congregate care facilities are used throughout the day and night, and the institutional uses of these facilities are primary uses of the facilities, not accessory uses, and draw a large number of employees, vehicles, and equipment compared to that drawn to family day care homes.

(c) The expansion permitted for family day care homes by Sections 1597.44 and 1597.465 is not appropriate with respect to congregate care facilities, or any other facilities

with quasi-institutional uses. Therefore, with these provisions, the Legislature does not intend to alter the legal standards governing congregate care facilities and these provisions are not intended to encourage, or be a precedent for, changes in statutory and case law governing congregate care facilities.

§ 1597.44. Small family day care homes; number of children

A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

(a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.

(b) No more than two infants are cared for during any time when more than six children are cared for.

(c) The licensee notifies each parent that the facility is caring for two additional schoolage children and that there may be up to seven or eight children in the home at one time.

(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

§ 1597.45. Small family day care homes

All of the following shall apply to small family day care homes:

(a) The use of single-family residence as a small family day care home shall be considered a residential use of property for the purposes of all local ordinances.

(b) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home.

(c) Use of a single-family dwelling for purposes of a small family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law) or for purposes of local building codes.

(d) A small family day care home shall not be subject to Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of Chapter 1 of Part 2, except that a small family day care home shall contain a fire extinguisher and smoke detector device that meet standards established by the State Fire Marshal.

§ 1597.46. Large family day care homes

All of the following shall apply to large family day care homes:

(a) A city, county, or city and county shall not prohibit large family day care homes on lots zoned for single-family dwellings, but shall do one of the following:

(1) Classify these homes as a permitted use of residential property for zoning purposes.

(2) Grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to any large family day care home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to those homes, and complies with subdivision (e) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise level generated by children. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, or if

there is no zoning administrator by the person or persons designated by the planning agency to grant these permits, upon the certification without a hearing.

(3) Require any large family day care home to apply for a permit to use a lot zoned for single-family dwellings. The zoning administrator, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits shall review and decide the applications. The use permit shall be granted if the large family day care home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes, and complies with subdivision (e) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise levels generated by children. The local government shall process any required permit as economically as possible.

Fees charged for review shall not exceed the costs of the review and permit process. An applicant may request a verification of fees, and the city, county, or city and county shall provide the applicant with a written breakdown within 45 days of the request. Beginning July 1, 2007, the application form for large family day care home permits shall include a statement of the applicant's right to request the written fee verification.

Not less than 10 days prior to the date on which the decision will be made on the application, the zoning administrator or person designated to handle the use permits shall give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a 100-foot radius of the exterior boundaries of the proposed large family day care home. A hearing on the application for a permit issued pursuant to this paragraph shall not be held before a decision is made unless a hearing is requested by the applicant or other affected person. The applicant or other affected person may appeal the decision. The appellant shall pay the cost, if any, of the appeal.

(b) In connection with any action taken pursuant to paragraph (2) or (3) of subdivision (a), a city, county, or city and county shall do all of the following:

(1) Upon the request of an applicant, provide a list of the permits and fees that are required by the city, county, or city and county, including information about other permits that may be required by other departments in the city, county, or city and county, or by other public agencies. The city, county, or city and county shall, upon request of any applicant, also provide information about the anticipated length of time for reviewing and processing the permit application.

(2) Upon the request of an applicant, provide information on the breakdown of any individual fees charged in connection with the issuance of the permit.

(3) If a deposit is required to cover the cost of the permit, provide information to the applicant about the estimated final cost to the applicant of the permit, and procedures for receiving a refund from the portion of the deposit not used.

(c) A large family day care home shall not be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) Use of a single-family dwelling for the purposes of a large family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law), or for purposes of local building and fire codes.

(e) Large family day care homes shall be considered as single-family residences for the purposes of the State Uniform Building Standards Code and local building and fire codes, except with respect to any additional standards specifically designed to promote the fire and

life safety of the children in these homes adopted by the State Fire Marshal pursuant to this subdivision. The State Fire Marshal shall adopt separate building standards specifically relating to the subject of fire and life safety in large family day care homes which shall be published in Title 24 of the California Code of Regulations. These standards shall apply uniformly throughout the state and shall include, but not be limited to: (1) the requirement that a large family day care home contain a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal; (2) specification as to the number of required exits from the home; and (3) specification as to the floor or floors on which day care may be provided. Enforcement of these provisions shall be in accordance with Sections 13145 and 13146. No city, county, city and county, or district shall adopt or enforce any building ordinance or local rule or regulation relating to the subject of fire and life safety in large family day care homes which is inconsistent with those standards adopted by the State Fire Marshal, except to the extent the building ordinance or local rule or regulation applies to single-family residences in which day care is not provided.

(f) The State Fire Marshal shall adopt the building standards required in subdivision (d) and any other regulations necessary to implement this section.

§ 1597.465. Large family day care homes; number of children

A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

(a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.

(b) No more than three infants are cared for during any time when more than 12 children are being cared for.

(c) The licensee notifies a parent that the facility is caring for two additional schoolage children and that there may be up to 13 or 14 children in the home at one time

(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

§ 1597.467. Injury or acts of violence reporting requirements

(a) Whenever any licensee under this chapter has reasonable cause to believe that a child in his or her care has suffered any injury or has been subjected to any act of violence while under the licensee's care, the licensee shall, as soon as possible, report that injury or act of violence to the parent, parents, or guardian of that child.

(b)(1) A report shall be made to the department by telephone or fax during the department's normal business hours before the close of the next working day following the occurrence during the operation of a family day care home of any of the following events:

(A) Death of any child from any cause.

(B) Any injury to any child that requires medical treatment.

(C) Any unusual incident or child absence that threatens the physical or emotional health or safety of any child.

(2) In addition to the report required pursuant to paragraph (1), a written report shall be submitted to the department within seven days following the occurrence of any events specified in paragraph (1). The report shall contain all of the following information:

(A) Child's name, age, sex, and date of admission.

(B) Date and nature of the event.

(C) Attending physician's name and findings and treatment, if any.

(D) Disposition of the case.

(c) The department may develop the report form to be used for reporting purposes pursuant to this section, and shall maintain all reports filed under this section in a manner that allows the department to report the data to the Legislature.

(d) The failure of a licensee to report, as prescribed by this section, any injury of, or act of violence to, a child under the licensee's care may be grounds for the suspension of his or her license pursuant to this chapter, but shall not constitute a misdemeanor.

(e) Nothing in this section shall relieve any licensee of any obligation imposed by other law including, but not limited to, laws relating to seeking medical attention for a child or reporting suspected child abuse.

§ 1597.47. Local public entities; restrictions on building heights, setbacks, or lot dimensions; application of local ordinances; abatement of nuisances

The provisions of this chapter shall not be construed to preclude any city, county, or other local public entity from placing restrictions on building heights, setback, or lot dimensions of a family day care facility as long as such restrictions are identical to those applied to other single-family residences. The provisions of this chapter shall not be construed to preclude the application to a family day care facility for children of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. The provisions of this chapter also shall not be construed to prohibit or restrict the abatement of nuisances by a city, county, or city and county. However, such ordinance or nuisance abatement shall not distinguish family day care facilities from other single-family dwellings, except as otherwise provided in this chapter.

§ 1597.50. Renumbered § 1597.30 and amended by Stats. 1983, c. 1233, § 1

§ 1597.501. Renumbered § 1597.40 and amended by Stats. 1938, c. 1233, § 3

§ 1597.51. Renumbered § 1596.871 and amended by Stats 1984, c. 6165, § 12

§ 1597.52. Limitation on licensing reviews to health and safety considerations; experience requirement for provider of large family day care home

(a) Licensing reviews of a family day care home for children shall be limited to health and safety considerations and shall not include any reviews of the content of any educational or training programs of the facility.

(b) No home shall be licensed or registered as a large family day care home after January 1, 1984, unless the provider has at least one year's experience as a regulated small family day care home operator or as an administrator of a licensed day care center. The director may waive this requirement upon a finding that the applicant has sufficient qualifying experience.

§ 1597.53. Licensure; law governing

No family day care home for children shall be licensed under Chapter 3 (commencing with Section 1500), but shall be subject to licensure exclusively in accordance with this chapter

and Chapter 3.4 (commencing with Section 1596.70) which shall apply to family day care homes.

§ 1597.531. Liability insurance or bond; affidavits; additional insured parties

(a) All family day care homes for children shall maintain in force either liability insurance covering injury to clients and guests in the amount of at least one hundred thousand dollars (\$ 100,000) per occurrence and three hundred thousand dollars (\$ 300,000) in the total annual aggregate, sustained on account of the negligence of the licensee or its employees, or a bond in the aggregate amount of three hundred thousand dollars (\$ 300,000). In lieu of the liability insurance or the bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home which meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to standards established by the state. If the provider does not own the premises used as the family day care home, the affidavit shall also state that the parent has been informed that the liability insurance, if any, of the owner of the property or the homeowners' association, as appropriate, may not provide coverage for losses arising out of, or in connection with, the operation of the family day care home, except to the extent that the losses are caused by, or result from, an action or omission by the owner of the property or the homeowners' association, for which the owner of the property or the homeowners' association would otherwise be liable under the law. These affidavits shall be on a form provided by the department and shall be reviewed at each licensing inspection.

(b) A family day care home that maintains liability insurance or a bond pursuant to this section, and that provides care in premises that are rented or leased or uses premises which share common space governed by a homeowners' association, shall name the owner of the property or the homeowners association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:

(1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.

(2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.

(3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.

(c) As used in this section, "homeowners' association" means an association of a common interest development, as defined in Section 1351 of the Civil Code.

§ 1597.54. Application for license

All family day care homes for children, shall apply for a license under this chapter, except that any home which on June 28, 1981, had a valid and unexpired license to operate as a family day care home for children under other provisions of law shall be deemed to have a license under this chapter for the unexpired term of the license at which time a new license may be issued upon fulfilling the requirements of this chapter.

An applicant for licensure as a family day care home for children shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, all of the following:

(a) A brief statement confirming that the applicant is financially secure to operate a

family day care home for children. The department shall not require any other specific or detailed financial disclosure.

(b)(1) Evidence that the small family day care home contains a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal under subdivision (d) of Section 1597.45, or evidence that the large family day care home meets the standards established by the State Fire Marshal under subdivision (d) of Section 1597.46.

(2) Evidence satisfactory to the department that there is a fire escape and disaster plan for the facility and that fire drills and disaster drills will be conducted at least once every six months. The documentation of these drills shall be maintained at the facility on a form prepared by the department and shall include the date and time of the drills.

(c) The fingerprints of any applicant of a family day care home license, and any other adult, as required under subdivision (b) of Section 1596.871.

(d) Evidence of a current tuberculosis clearance, as defined in regulations that the department shall adopt, for any adult in the home during the time that children are under care.

(e) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and Chapter 3.4 (commencing with Section 1596.70) and the regulations adopted pursuant to those chapters.

(f) Evidence satisfactory to the department that the applicant and all other persons residing in the home are of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references.

(g) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(h) Other information as may be required by the department for the proper administration and enforcement of the act.

§ 1597.541. Age-appropriate immunization requirements; adoption of regulations

(a) The department shall adopt regulations regarding age-appropriate immunization requirements for enrolled children for family day care homes.

(b) All family day care homes for children shall maintain evidence that enrolled children have met the age-appropriate immunization requirements adopted pursuant to this section.

§ 1597.542. Regulations; degrees of violations; implementation

(a) The Division of Child Care Licensing in the department shall clearly differentiate degrees of violations of the regulations adopted for purposes of this chapter by the impact upon children in care.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

§ 1597.55. Renumbered

§ 1597.55a. Unannounced visits; announced site visits prior to initial licensing; circumstances under which annual unannounced sit visits to are conducted; spot checks

Every family day care home shall be subject to unannounced visits by the department as provided in this section. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(a) The department shall conduct an announced site visit prior to the initial licensing of the applicant.

(b) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

(3) When an accusation against a licensee is pending.

(4) In order to verify that a person who has been ordered out of a family day care home by the department is no longer in the facility.

(c)(1) The department shall conduct annual unannounced visits to no less than 20 percent of facilities not subject to an evaluation under subdivision (b). These unannounced visits shall be conducted based on a random sampling methodology developed by the department.

(2) If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by 10 percent of the facilities not subject to an evaluation under subdivision (b). The department may request additional resources to increase the random sample by 10 percent.

(d) Under no circumstances shall the department visit a licensed family day care home less often than once every five years.

(e) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.

(f) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a follow-up visit as provided in Section 1596.853.

(g) An unannounced site visit shall adhere to both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which the family day care services are provided or to which the children have access.

(h) The department shall implement this section during periods that Section 1597.55b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

§ 1597.55b. Site visits; unannounced visits or spot checks; annual visits on all licensed family day care homes; implementation

No site visits, unannounced visits, or spot checks, shall be made under this chapter except as provided in this section.

(a) An announced site visit shall be required prior to the licensing of the applicant.

(b) A public agency under contract with the department may make spot checks if they

do not result in any cost to the state. However, spot checks shall not be required by the department.

(c) An unannounced site visit to all licensed family day care homes shall be made annually and as often as necessary to ensure compliance.

(d) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a follow up visit as provided in Section 1596.853. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint.

(e) The department shall annually make unannounced spot visits on 20 percent of all family day care homes for children licensed under this chapter. The unannounced visits may be made at any time, and shall be in addition to the visits required by subdivisions (b) and (c).

(f) An unannounced site visit shall comply with both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(g) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

§ 1597.56. Noncompliance; written notice; civil penalties; plan of correction; regulations

(a) The department shall notify a family day care home in writing of all deficiencies in its compliance with this act and the rules and regulations adopted pursuant to this act, and shall set a reasonable length of time for compliance by the family day care home. Upon a finding of noncompliance with a plan of correction, the department may levy a civil penalty that shall be paid to the department each day until the department finds the family day care home in compliance.

(b) In developing a plan of correction both the licensee and the department shall give due consideration to the following factors:

(1) The gravity of the violation.

(2) The history of previous violations.

(3) The possibility of a threat to the health or safety of any child in the facility.

(4) The number of children affected by the violation.

(5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) The department shall ensure that the licensee's plan of correction is verifiable and measurable. The plan of correction shall specify what evidence is acceptable to establish that a deficiency has been corrected. This evidence shall be included in the department's facility file.

(d) The department shall adopt regulation establishing procedures for the imposition of civil penalties under this section.

§ 1597.57. Applications forms, consumer education program; orientation program

The department shall do all of the following:

(a) Develop and utilize one application form for all family day care homes for children requesting a new license.

(b) Establish for parents a consumer education program annually on the law and regulations governing family day care homes for children under this chapter and the role of the state and other public entities and local associations in relation to family day care homes for children. In planning this program, the department shall seek the assistance of other public entities and local associations.

(c) Administer an orientation program for new operators of family day care homes for children that may be conducted directly by the department or by contract with local governments or family day care home associations.

§ 1597.58. Civil penalties

(a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter, the department may levy a civil penalty.

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment or both, as determined by the department. In no event shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day per violation.

(c) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56, and 1597.62 the department shall assess an immediate civil penalty of one hundred fifty dollars (\$150) per day per violation for any of the following serious violations:

(1) Any violation that results in the injury, illness, or death of a child.

(2) Absence of supervision, including, but not limited to, a child left unattended, a child left alone with a person under 18 years of age, and lack of supervision resulting in a child wandering away.

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

(5) Refused entry to a facility or any part of a facility in violation of Sections 1596.852, 1596.853, 1597.55a and 1597.55b.

(6) The presence of an excluded person on the premises.

(d) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56 and 1597.62, any family day care home that is cited for repeating the same violation of this chapter or Chapter 3.4 (commencing with Section 1596.70), within 12 months of the first violation is subject to an immediate civil penalty assessment of up to one hundred fifty dollars (\$150) and may be assessed up to fifty dollars (\$50) for each day the violation continues until the deficiency is corrected.

(e) Any family day care home that is assessed a civil penalty under subdivision (d) that repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) shall be assessed an immediate assessment of up to one hundred fifty dollars (\$150) and may be assessed up to one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

(f) Notwithstanding any other provision of law, revenues received by the state from the payment of civil penalties imposed on licensed family day care homes pursuant to this chapter or Chapter 3.4 (commencing with Section 1596.70), shall be deposited in the Child Health and Safety Fund, created pursuant to Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code, and shall be expended, upon appropriation by the Legislature, pursuant to subdivision (f) of Section 18285 of the Welfare and Institutions Code exclusively for the technical assistance, orientation, training, and education of licensed

family day care home providers.

§ 1597.59. Disposition of license application; conditions; site visits

The department and the local agencies with which it contracts for the licensing of family day care homes for children shall grant or deny a license to a family day care home for children within 30 days after receipt of all appropriate licensing application materials as determined by the department, provided both of the following conditions are met:

(a) A site visit has been completed and the family day care home has been found to be in compliance with licensing standards.

(b) The applicant and each person described by subdivision(b) of Section 1596.871 has obtained a criminal record clearance, or been granted a criminal record exemption by the department or the local contracting agency. The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials.

§ 1597.60. Repealed

§ 1597.61. Operation without license; notice; cease and desist order; action to enjoin; conduct of prosecution

(a) When the department determines that a family day care home for children is operating without a license and notifies the unlicensed provider of the requirement for the license, the licensing agency may issue a cease and desist order only if it finds and documents that continued operation of the facility will be dangerous to the health and safety of the children or if a license held by the facility has been revoked by the department within two years preceding the determination of unlicensed operation. In all other cases where the licensing agency determines such a facility is operating without a license and notifies the unlicensed provider of the requirements for the license, the licensing agency may issue a cease and desist order only if the unlicensed provider does not apply for a license within a reasonable time after the notice.

(b) If an unlicensed family day care home fails to respond to a cease and desist order issued pursuant to subdivision (a), or if the department determines it necessary to protect the immediate health and safety of the children, the licensing agency may bring an action to enjoin such a home from continuing to operate pursuant to Section 1596.89.

(c) The district attorney of a county shall, upon application by the department, institute and conduct the prosecution of any action brought by the licensing agency against an unlicensed family day care home located in that county.

§ 1597.62. Civil penalties; uncorrected violations; implementation

(a) The department may impose civil penalties of not less than twenty-five dollars (\$25) and not more than fifty dollars (\$50) per day per violation for uncorrected violations that present an immediate or potential risk to the health and safety of children in care. The penalties shall be imposed in accordance with Sections 1596.893b and 1597.56.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

§ 1597.621. License for the pilot project registrants; requirements; complaint and revocation procedures

Family day care homes that, on December 31, 1983, have a valid unexpired registration to operate as a family day care home for children pursuant to Section 1597.62 in one of the pilot counties shall be deemed to be issued a family day care license effective January 1, 1984. Licensure pursuant to this section shall not require a visit pursuant to the requirement set forth in subdivision (a) of Section 1597.55. However, all other requirements of licensing shall continue to be met. Complaint and revocation procedures may be enforced.

1597.63. Repealed

1597.64. Renumbered

1597.65. Repealed

CHAPTER 3.65. EMPLOYER-SPONSORED CHILD CARE CENTERS

ARTICLE 1. GENERAL PROVISIONS

§ 1597.70. Legislative findings and declarations

The Legislature finds and declares the following:

(a) It is significant that the Santa Clara County Intergovernmental Council has found that due to changes in the labor force and an increase in the child population, 25 percent of the nation's workers must make child care arrangements.

(b) Californians will benefit from investment in child care. According to the House Select Committee on Children, Youth, and Families, one dollar invested in preschool education results in a savings of four dollars and seventy-five cents (\$ 4.75) in social costs.

(c) Allowing and encouraging businesses to open onsite or near site employer-sponsored child care centers has had a number of positive effects for Californians, including reduced job absenteeism, closer parent-child relationships, and increased worker productivity.

(d) In a 1990 study, the Department of General Services found that working parents add five to six miles to their daily commute for transporting their children to child care and school, and that the effect of this commute is 1,352 extra miles driven each year and an additional 56 pounds of auto emissions per person per year.

ARTICLE 2. LICENSING WAIVERS FOR SMALL BUSINESSES

§ 1597.71. Regulations presenting difficulties to small business

To encourage and facilitate the establishment of employer-sponsored child day care centers, the department shall allow for reasonable waivers of those regulations presenting difficulties to small businesses for licensure, provided that the health and safety of all children is maintained and that the applicant has agreed to alternative methods of meeting the purpose and intent of any regulation waived.